STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF WATER AND LAND DEVELOPMENT

INTERIM

GENERAL CONDITIONS

OCTOBER 1994

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Governor

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INTERIM GENERAL CONDITIONS
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SECTION 1--DEFINITIONS

Whenever the following terms or pronouns are used in these specifications, or in any documents or instruments where these specifications govern, the intent and meaning shall be interpreted as follows:

Addendum A written document which may be issued by the Engineer during the bidding period involving changes to the plans and specifications which shall be considered and made a part of the contract.

Advertisement A public announcement inviting bids for work to be performed or materials to be furnished.

Amendment A written document properly executed by the Contractor and the Engineer issued to amend the existing contract between the State and the Contractor.

Bid or Proposal The offer of a bidder submitted in the prescribed manner, to perform at the prices quoted the work specified under the contract within the time prescribed for performance.

Bid Security The security furnished by the bidder as a warranty of good faith that he will enter into a contract with the State and to execute the required bonds covering the work contemplated, if his proposal is accepted.

Bidder Any individual, partnership, firm, corporation, joint venture, or other legal entity submitting, directly or through a duly authorized representative or agent, a proposal for the work contemplated.

Board of Land and Natural Resources The Board of Land and Natural Resources of the State of Hawaii as created by law, also sometimes referred to as the "Board", and acting either directly of through the Department of Land and Natural Resources or the Engineer.

By or To the Engineer To avoid cumbersome and confusing repetition of expressions in these specifications, it is provided that whenever the following words or words of like import are used, they shall be understood as if they were followed by the words "by the Engineer" or "to the Engineer", unless the context clearly indicates another meaning: contemplated, required, determined, directed, specified, authorized, ordered, given, designated, indicated, considered necessary, deemed necessary, permitted, reserved, suspended, established, approval, approved, disapproved, acceptable, unacceptable, suitable, accepted, satisfactory, unsatisfactory, sufficient, insufficient, rejected or condemned.

Calendar day Any day shown on the calendar beginning at midnight and ending at midnight the following day. If no designation of calendar or working day is made, "day" shall mean calendar day.

Change Order A written order issued by the Engineer to the contractor requiring the contract work to be performed in accordance with a change or changes that may involve an adjustment in contract time and price or requiring performance of any unforeseen work essential to completion of the contract. A change order signed by all the parties to the contract constitutes a supplemental agreement.

Comptroller The Comptroller of the State of Hawaii, Department of Accounting and General Services.

Contract The written agreement between the Contractor and the State of Hawaii, by which the Contractor is bound to furnish all labor, equipment, and materials and to perform the specified work within the contract time stipulated, and by which the State of Hawaii is obligated to compensate the Contractor therefor at the prices set forth therein. The contract shall include the Notice to Contractors, Addenda, Proposal, Wage Schedule, List Of Subcontractors, General Conditions, Special Provisions, Plans, Technical Specifications, Contract Bonds and also any and all amendments and change orders which are required to complete the construction in an acceptable manner.

Contract Time The number of working or calendar days provided in the contract for completion of the contract, exclusive of authorized time extensions. The number of days shall begin running on the effective date in the Notice to Proceed. If in lieu or providing a number of working or calendar days, the contract requires completion by a certain date, the work shall be completed by that date.

Contractor Any individual, partnership, firm, corporation or joint venture, or other legal entity undertaking the execution of the work under the terms of the contract with the State of Hawaii, and acting directly or through his, their or its agents, or employees.

Department The Department of Land and Natural Resources, a body corporate of the State of Hawaii acting under the administrative direction of the Board of Land and Natural Resources.

Division of Water and Land Development An operating division of the Department of Land and Natural Resources.

Engineer The Manager-Chief Engineer of the Division of Water and Land Development, acting either directly or through authorized assistants.

Equal or Approved Equal Whenever this term is used in the plans and/or specifications this shall be interpreted to mean a brand or article in accordance with Subsection 6.3 "SUBSTITUTION OF MATERIALS AND EQUIPMENT" which may be used in place of the one specified.

Holidays The days of each year which are set apart and established as State holidays pursuant to Chapter 8, H.R.S.

Inspector Authorized assistant or representative of the Engineer assigned to make detailed inspections of contract performance and materials supplied.

Laws All Federal, State, City and County Laws, ordinances rules and regulations, and standard specifications, including any amendments thereto effective as of the date of the call for sealed tenders.

Liquidated Damages The amount prescribed in the General Conditions, Subsection 7.22 "FAILURE TO COMPLETE THE WORK ON TIME" to be paid to the State or to be deducted from any payments due or to become due the Contractor for each working day or calendar day (as applicable) delay in completing the whole or any specified portion of the work beyond the contract time allowed in the contract.

Letter of Award A written notice from the Board to the successful bidder(s) stating that his proposal has been accepted by the State.

Notice to Contractors The advertisement for proposals for all work or materials on which bids are required. Such advertisement will indicate the location of the work to be done or the character of the material to be furnished and the time and place of the opening of proposals.

Notice to Proceed A written notice from the Board to the Contractor advising him of the date on which he is to begin the prosecution of the work, which date shall also be the beginning of contract time.

Notice of Final Settlement A written notice published in a newspaper of general circulation, when the Board has determined and certified to the amount deemed by him to be due to or from the Contractor after the work called for by the contract is fully completed although full payment is not then made and the amount may be subject to change.

Plans The contract drawings, which show the location, character, dimensions and details of the work to be done and which shall be a part of the contract.

Post Contract Drawings Drawings issued after the award of the contract for the purpose of clarification and/or change to the work indicated in the original plans and which shall be made a part of the contract.

Project Contract Limits The portion of the site as delineated on the plans which define the Contractor's primary area of operation for the prosecution of the work. It does not define the exact limits of all construction that may be required under the contract.

Project Guarantee A guarantee issued by the Contractor to the State warranting against defects resulting from the use of defective materials or equipment and poor workmanship.

Proposal Form The form prepared by the Department on which the written offer or formal bid for the work to be done is submitted by the bidder.

Questionnaire The specified forms on which the bidder shall furnish required information as to his ability to perform and finance the work.

Special Provisions The specific clauses setting forth conditions or requirements peculiar to the individual project under consideration, which are not thoroughly or satisfactorily stipulated in these specifications.

Specifications The directions, provisions and requirements, as contained in these General Conditions, addenda, special provisions, technical specifications, and change orders, pertaining to the method and manner of performing the work and the quantities and quantities of materials to be furnished under the contract.

State The State of Hawaii acting through its authorized representative.

Subcontractor An individual, partnership, firm, corporation, joint venture or other legal entity, as covered in Chapter 444, Hawaii Revised Statutes, which enters into an agreement with the Contractor to perform a portion of the work for the Contractor.

Superintendent The *employee* of the Contractor, authorized to receive and fulfill instructions from the Engineer, who is charged with the responsibility of all work.

Surety The individual, firm or corporation other than the Contractor, which executes a bond with and for the contractor to insure his acceptable performances of the contract.

Work The furnishing of all labor, materials, equipment, and other incidentals necessary or convenient for the successful completion of the project and the execution of all the duties and obligations imposed by the contract.

Working day A calendar day, exclusive of Saturdays, Sundays and State-recognized legal holidays, on which weather and conditionsnot under the control of the Contractor will permit construction operations to proceed for at least six (6) hours or the day with the normal working force engaged in performing the controlling item(s) of work in progress at the time, as determined by the Engineer.

SECTION 2--PROPOSAL REQUIREMENTS AND CONDITIONS

2.1 QUALIFICATION OF BIDDERS--Prospective bidders must be capable of performing the work for which bids are being called.

In accordance with Section *103D-310*, Hawaii Revised Statutes, each prospective bidder must file a written notice of his intention to bid. This written notice must be addressed to the Manager-Chief Engineer, Division of Water and Land Development, who is the officer charged with letting the contract. The words, "intention to bid" must be clearly written or typed on the face of the envelope containing the written notice of intention to bid. The notice may be handcarried, mailed or sent by telephone facsimile to the office or telephone facsimile number indicated in the Notice to Contractors.

In either case, the written notice must be received in the above office no later than 2:00 p.m. on the *10*th calendar day prior to the day designated for opening bids. If the *10*th calendar day prior to the day designated for opening bids is a Saturday, Sunday, or legal State holiday, then the written notice must be received by the State no later than 2:00 p.m. on the last working day immediately prior to said Saturday, Sunday, or legal State holiday. The written notice will be time stamped when received by said office. The time designated by the time stamping device in said office shall be official. If the written notice is handcarried, then the bearer is responsible to ensure that the notice is time stamped by said office.

It is the responsibility of the prospective bidder to ensure that the written notice of intention to bid is received in time and the State assumes no responsibility for failure of timely delivery caused by the prospective bidder or by any method of conveyance chosen by the prospective bidder.

If two (2) or more prospective bidders desire to bid jointly as a joint venture on a single project, they must file an affidavit of joint venture with their notice of intention to bid. Such affidavit of joint venture will be valid only for the specific project for which it is filed. No further license is required when all parties to the joint venture possess current and appropriate contractor's licenses. Joint ventures are

required to be licensed in accordance with Chapter 444 of the Hawaii Revised Statutes, as amended, and the rules and regulations of the Contractor's License Board when any party to the joint venture agreement does not hold a current or appropriate to the contractor's license. *The joint venture must register with the office of the Director of Commerce and Consumer Affairs in accordance with Chapter 425 of the Hawaii Revised Statutes, as amended.*

A written notice of intention to bid must be filed for all construction of buildings, roads, other field construction work or other public works and in conjunction therewith, the furnishing and installing of furniture, equipment, appliances, material and any combination of these items where to do such work requires a contractor's license under Chapter 444 of the Hawaii Revised Statutes, as amended, and the rules and regulations of the Contractor's License Board. A written notice of intention to bid need not be filed for the mere furnishing and installing of furniture, equipment, appliances, material and any combination of these items when a contractor's license is not required under Chapter 444 of the Hawaii Revised Statutes, as amended, and the rules and regulations of the Contractor's License Board.

No person, firm or corporation may bid where (1) the person, firm, or corporation, or (2) a corporation owned substantially by the person, firm, or corporation, or (3) a substantial stockholder or an officer of the corporation, or (4) a partner or substantial investor in the firm is in arrears in any payment owned to the State of Hawaii or any of its political subdivisions or is in default of any obligations to the State of Hawaii or to any of its political subdivisions, including default as a surety or failure to perform faithfully and diligently any previous contract with the State.

Any person, firm or corporation that submits a Notice of Intention to Bid must submit along with said Notice of Intention to Bid a current statement or certificate from the Director of Taxation to the effect that all delinquent taxes levied or accrued under State statutes against said person, firm or corporation have been paid, and any other evidence requested by and acceptable to the contracting officer to demonstrate that the prospective bidder is not in default of any obligations due to the State or any of its political subdivisions.

Any person, firm or corporation that is not presently doing business in the State of Hawaii and submits a Notice of Intention to bid must submit along with said Notice of Intention to Bid a certified letter stating that said person, firm or corporation is not doing business in the State of Hawaii and is not in default of any obligations due to the State or any of its political subdivisions.

The required tax certificate or certified letter must be filed along with the bidder's Notice of Intention to Bid.

Failure to submit the required tax certificate or certified letter will be sufficient grounds for the State to refuse to receive or consider the prospective bidder's proposal.

The Engineer may, in accordance with Section *103D-310* Hawaii Revised Statutes, require the prospective bidder to submit answers to question contained in the "Standard Qualification Questionnaire for Prospective Bidders on Public Works Contracts", on the form provided by the Department, properly executed and notarized, setting forth a complete statement of the experience of such prospective bidder and his organization in performing similar work and a statement of the equipment proposed to be used, together with adequate proof of the availability of such equipment, at least forty-eight (48) hours prior to the time advertised for the opening of bids. If the information in the questionnaire proves satisfactory, the bidder's proposal will be received. All information contained in the answers to the questionnaire shall be kept confidential. The questionnaire will be returned to the bidder after it has served its purpose.

If upon review of the Questionnaire, or otherwise, the bidder appears not fully qualified or able to perform the intended work, the Engineer shall, after affording the bidder an opportunity to be heard and if still of the opinion that the bidder is not fully qualified to perform the work, refuse to receive or to consider any bid offered by the prospective bidder.

Failure to complete the prequalification questionnaire will be sufficient cause for the Department to disqualify a prospective bidder.

2.2 INTERPRETATION OF QUANTITIES IN BID SCHEDULE--When quantities for individual items of work are listed in the proposal form for which respective unit prices are asked, said quantities are to be considered as approximate and are to be used by the Department only for the purpose of comparing on a uniform basis bids offered for the work. The Department does not, expressly or by implication, agree that the actual quantity of work will correspond therewith. The undersigned agrees that he is satisfied with and will at no time dispute said estimated quantities as a means of comparing the bids.

After determining the low bidder by comparison of bids submitted in accordance with the proposal form and Subsection 3.1--"CONSIDERATION OF PROPOSALS" in these specifications, the State reserves the right to increase or decrease the scope of the improvement, subject to the provisions of Subsection 4.2--"CHANGES AND CLAIMS FOR ADJUSTMENT".

On unit price bids, payment will be made only for the actual number of units incorporated into the finished project at the unit price bid.

It is understood and agreed that the contractor will make no claim for anticipated profit or loss of profit due to the Department's right to eliminate entirely portions of the work or to increase or decrease any or all of the quantities shown in the proposal form.

2.3 CONTENTS OF PROPOSAL FORMS--Prospective bidders will be furnished with proposal forms giving the location, description, and the contract time of the work contemplated for which a lump sum bid price is asked or containing a schedule of items, together with estimated quantities of work to be performed and materials to be furnished, for which unit bid prices and/or lump sum bid prices are asked.

Proposal forms will also include a listing of joint contractors and/or subcontractors indicating the name of each person or firm to be engaged on the project as a joint contractor or subcontractor along with their contractor's license number. The prime contractor is responsible for verifying that their joint contractors or subcontractors have the proper license at the time of submittal of the bid.

All papers bound with or attached to the proposal form shall be considered a part thereof and shall not be detached or altered when the proposal is submitted.

The plans, specifications and other documents designated in the proposal form, will also be considered a part thereof whether attached or not.

2.4 BIDDERS RESPONSIBILITY FOR EXAMINATION OF PLANS, SPECIFICATIONS, SITE OF WORK, ETC.-- The bidder shall examine carefully the site of work contemplated and the proposal, plans, specifications, supplemental specifications, special provisions and contract and bond forms therefore. The submission of a bid shall be considered as a warranty that the bidder has made such examination and is satisfied with the conditions to be encountered in performing the work and with the requirements of the plans, specifications, supplemental specifications, special provisions, contract and bonds.

No extra compensation will be given by reason of the Contractor's misunderstanding or lack of knowledge of the requirements of the work to be accomplished in performing the project.

Where an investigation of subsurface conditions has been made by the Department in respect to foundation or other design, the bidders may inspect the records of the Department as to such investigation, including examination of samples, if any, at the office of the Manager-Chief Engineer, Division of Water and Land Development, Honolulu, Hawaii. It is understood, however, that any such information furnished is for the bidders' convenience only and no assurance is given that conditions found at the time of the subsurface investigation, such as the presence or absence of water, will be conditions that prevail at the time of construction.

When the contract plan includes a log of test borings showing a record of the data obtained by the Department's investigation of subsurface conditions, said log represents only the opinion of the Department as to the character of material encountered by it in its test borings and there is no warranty, either expressed or implied, that the conditions indicated are representative of those existing throughout the work or any part of it, or that unforeseen developments may not occur.

Information regarding the site of the work given on the drawings or specifications has been obtained by the Department and is believed to be reasonably correct. However, it is the responsibility of the bidder to verify all such information. *During the progress of the work, if the Contractor encounters conditions at the site differing from those shown in the plans and specifications, he shall promptly, and before any such conditions are disturbed or damaged, notify the Engineer of:*

a. Subsurface or latent physical conditions at the site differing materially from those indicated in the contract; or

b. Unknown physical conditions at the site, of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract.

After receipt of such notice, the Engineer shall promptly investigate the site, and if it is found that such conditions do materially so differ and cause an increase in the contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed as a result of such conditions, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with Subsection 4.2a "PRICE ADJUSTMENT".

Nothing contained in this clause shall be grounds for an adjustment in compensation if the contractor had actual knowledge

of the existence of such conditions prior to the submission of bids.

At the time of opening of bids, each bidder will be presumed to have conducted a detailed inspection of the project site, to have read and to be familiar with the Plans, Specifications and other contract documents, including all Addenda. The failure or omission of any bidder to thoroughly inspect the site or to receive or examine any form, instrument or document shall in no way relieve him from any obligation regarding his bid.

The bidder acknowledges that he has investigated and satisfied himself as to the conditions affecting the project site. These conditions include but are not limited to, those bearing on transportation, access, roads, uncertainties of weather, river stages, tides, underwater topography and similar physical conditions at the site. The bidder further acknowledges that he has satisfied himself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as is reasonably ascertained from an inspection of the site and information presented in the Plans, Specifications and other contract documents, including all Addenda.

The failure of the bidder to acquaint himself with the available information will not relieve him from responsibility for estimating the difficulty or cost of successfully performing the work, nor will the bidder be relieved of his obligations to furnish all materials, labor, equipment and incidentals necessary to perform the work set forth in his bid and to perform his contract, if awarded to him.

Any utilities that the Contractor encounters during the progress of the work, such as telephone ducts, electric ducts, water lines, sewer lines, electric lines and drainage pipes, whether shown or not on the contract plans, shall not be disturbed or damaged unless otherwise instructed in the plans and specifications.

In the event the utilities are damaged or disturbed by the Contractor, the Contractor shall be held liable for the damaged or disturbed utilities which were:

a. Shown on the plan.

b. Located and exposed on the job as it progressed.

c. Pointed out to the Contractor in the field.

The contractor shall repair the damaged or disturbed utilities to the existing condition at no cost to the State or the project. Any damage claims due to the disruption of service

caused by the utilities being damaged shall be paid by the Contractor who shall save harmless the State from all suits, actions or claims of any character brought on account of such damages.

In the event utilities which were not shown on the plans and specifications are damaged or disturbed by the Contractor, the Contractor shall not be held liable but shall notify the Engineer. Upon instruction from the Engineer, the Contractor shall repair all damages which shall be considered to be additional work as covered by Subsection 4.2b "ADDITIONAL WORK".

Utilities which must be relocated due to construction and not so indicated in the plans and specifications shall also be considered to be additional work as covered by Subsection 4.2b "ADDITIONAL WORK". The Contractor shall not in any case, if he encounters underground utilities, proceed with any work until he has notified the Engineer.

2.5 ADDENDA AND INTERPRETATIONS--Discrepancies, omissions, or doubts as to the meaning of drawings and specifications should be communicated in writing to MANAGER-CHIEF ENGINEER, DIVISION OF WATER AND LAND DEVELOPMENT, P.O. BOX 373, HONOLULU, HAWAII, 96809 for interpretation and must be received by the Division of Water and Land Development no later than fourteen (14) calendar days prior to the date fixed for bid opening. Any interpretation, if made, and any supplemental instructions will be in the form of written addenda to the plans and specifications, which will be mailed to all prospective bidders at the respective addresses furnished for such purposes, eight (8) calendar days prior to the date fixed for the opening bids. Failure of any bidder to receive any such addendum or interpretation shall not relieve such bidder from any obligation under his bid as submitted. All addenda so issued shall become part of the contract documents.

2.6 PREPARATION OF PROPOSAL--The bidder's proposal must be submitted on the proposal form furnished by the Department. The proposal must be prepared in full accordance with the instructions thereon. The bidder must state, both in words and numerals, the lump sum price at which the work contemplated is proposed to be done. These prices must be written in ink or typed. Prices written in pencil are not acceptable. In case of a discrepancy between the prices written in words and those written in figures, the words shall govern over the figures. The bidder shall sign the proposal in the spaces provided with ink.

If the proposal is made by an individual, his name and post office address must be shown in the space provided. If made by a partnership the name and post office address of each member of

the partnership must be shown and the proposal signed by all partners or evidence in the form of a partnership agreement must be submitted showing the authority of the partner to enter, on behalf of said partnership, into contract with the State. If made by a corporation the proposal must show the name, titles, and business address of the president, secretary and treasurer and also evidence in the form of a corporate resolution must be submitted showing the authority of the particular corporate representative to enter on behalf of said corporation into contract with the State. (See sample in Appendix.) If made by a joint venture the name and post office address of each member of the individual firm, partnership or corporation comprising the joint-venture must be shown with other pertinent information required of individuals, partnerships or corporations as the case may be. The proposal must be signed by all parties to the Joint-Venture or evidence in the form of a Joint-Venture Agreement must be submitted showing the authority of the Joint Venture's representative to enter on behalf of said Joint Venture into contract with the State.

Pursuant to the requirements of Section *103D-302*, Hawaii Revised Statutes, each bidder shall include in his bid the name of each person or firm to be engaged by the bidder on the project as joint contractor or subcontractor indicating also the nature and scope of work to be performed by such joint contractor and/or subcontractor.

2.7 *BID SECURITY*--No proposal *estimated by the State to total more than $25,000* will be considered unless accompanied by one of the following:

a. *Surety bid bond underwritten by a company licensed to issue bonds in this State (See Standard Form in Appendix); or*

b. *Legal Tender; or*

c. *Certificate of Deposit; share certificate; or cashier's, treasurer's, teller's or official check drawn by, or a certified check accepted by, and payable on demand to the State by a bank, a savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.*

   1) *These instruments may be utilized only to a maximum of $100,000.*

   2) *If the required security or bond amount totals over $100,000, more than one instrument not exceeding $100,000 each and issued by different financial institutions shall be accepted.*

CAUTION--Bidders are cautioned that certificates of deposit or share certificates with an early withdrawal penalty must have a face value sufficient to cover the maximum penalty amount in addition to the proposal guaranty requirement. Also if the certificate is made out to two names, the certificate must be assigned unconditionally to the Comptroller, State of Hawaii.

Unless otherwise stated, the bid security shall be at least five (5) percent of the bid amount.

If the bidder is a corporation, evidence in the form of a corporate resolution, authorizing the corporate representative to execute the bond must be submitted with the proposal. (See sample in Appendix.) If the bidder is a partnership, all partners must sign the bond or evidence in the form of a partnership agreement must be submitted showing the authority of the partner.

If the bidder is a joint venture, all parties to the joint venture must sign the bond or evidence in the form of a joint-venture agreement must be submitted showing the authority of the bidder to sign the bond on behalf of the joint-venture.

In the case where the award will be made on a group or item basis, the amount of *bid security* shall be based on the total bid for all groups or items submitted.

Bidders are cautioned that surety bid bonds which place a limit in value to the difference between the bid amount and the next acceptable bid, such value not to exceed the purported amount of the bond, are not acceptable. Also, surety bid bonds which place a time limit on the right of the State to make claim other than allowed by statutes or these GENERAL CONDITIONS are not acceptable. Bidders are hereby notified that a surety bid bond containing such limitation(s) is not acceptable and a bidder's bid accompanied by such surety bid bond will be automatically rejected.

2.8 DELIVERY OF PROPOSALS--The entire proposal shall be placed together with the bid security, in a sealed envelope no smaller than 9-1/2" x 12", so marked as to indicate the identity of the project, the project number, the date of bid opening and the name and address of the bidder and then delivered as indicated in the Notice to Contractors. Bids which do not comply with this requirement may not be considered. Proposals will be received up to the time fixed in the public notice for opening of bids and must be in the hands of the official by the time indicated. The words "SEALED BID" must be clearly written or typed on the face of the sealed envelope containing the proposal and bid security.

2.9 WITHDRAWAL OR REVISION OF PROPOSALS--*Offers may be modified or withdrawn prior to the deadline for submittal of offers by the following documents:*

a. *Withdrawal of offers:*

1. *A written notice received in the office designated in the solicitation; or*

2. *A written notice faxed to the office designated in the solicitation; or*

3. *A telegraphic message received by telephone by the office designated in the solicitation from the receiving telegraph company office, provided the telegraph company confirms the telephone message by sending a written copy of the telegram showing that the message was received at such office prior to the time and date set for the opening.*

b. *Modification of offers:*

1. *A written notice received in the office designated in the solicitation, stating that a modification to the offer is submitted; and*

2. *The actual modifications securely sealed in a separate envelope or container, accompanying the written notice.*

2.10 PUBLIC OPENING OF PROPOSALS--Proposals will be opened and read publicly at the time and place indicated in the Notice to Contractors. Bidders, their authorized agents and other interested parties are invited to be present.

2.11 DISQUALIFICATION OF BIDDERS--Any one or more of the following causes will be considered as sufficient for the disqualification of a bidder and the rejection of his proposal or proposals:

a. Non-compliance with Subsection 2.1 "QUALIFICATION OF BIDDERS".

b. Evidence of collusion among bidders.

c. Debarment or suspension in accordance with Section 103D-702, Hawaii Revised Statutes.

d. Being in arrears on existing contracts with the State of Hawaii, or having defaulted on a previous contract.

e. Lack of proper equipment and/or sufficient experience to perform the work contemplated, as revealed by the Standard Questionnaire and Financial Statement for Bidders.

f. No contractor's license or a contractor's license which does not cover type of work contemplated.

g. More than one proposal for the same work from an individual, firm, partnership, corporation or joint venture under the same or different name.

h. Delivery of bids after the 2:00 p.m. deadline specified in the advertisement calling for bids.

i. Failure to pay, or satisfactorily settle, all bills overdue for labor and materials of former contracts in force at the time of issuance of proposal forms.

3.1 CONSIDERATION OF PROPOSALS--After the proposals are opened and read, the figures will be extended and/or totaled in accordance with the bid prices of the acceptable proposals and the totals will be compared and the results of such comparison shall be made public. *In the event of a tie bid, the low bidder shall be determined by lot*. In the comparison of bids, words written in the proposals will govern over figures and unit prices will govern over totals. Until the award of the contract, however, the right will be reserved to reject any and all proposals and to waive any defects or technicalities as may be deemed best for the interest of the State.

a. **Subcontracting--The Contractor shall perform with his own organization, work amounting to not less than twenty percent (20%) of the total contract cost, except that any items designated by the State in the contract as "specialty items" may be performed by subcontract and the cost of any such specialty items so performed by subcontract may be deducted from the total contract cost before computing the amount of work required to be performed by the Contractor with his own organization.**

3.2 IRREGULAR PROPOSALS--Proposals will be considered irregular and may be rejected for the following reasons:

a. If the proposal is unsigned.

b. If *Bid security* is not in accordance with Subsection 2.7 **"BID SECURITY"**.

c. If proposal is on a form other than that furnished by the Department; or if the form is altered or any part thereof detached.

d. *If the proposal shows any non-compliance with applicable law, alteration of form, additions not called, conditional bids, incomplete bids, uninitialed erasures, other defects, or if the prices are obviously unbalanced.*

e. If the bidder adds any provisions reserving the right to accept or reject an award, or to enter into a contract pursuant to an award. This does not exclude a proposal limiting the maximum gross amount of awards acceptable to any one bidder at any one bid letting, provided that any selection of awards will be made by the Department.

f. When a proposal is signed by an officer or officers of a corporation and a currently certified corporate resolution authorizing such signer(s) to submit such proposal is not submitted with the proposal or when the proposal is signed by an agent other than the officer or officers of a corporation or a member of a partnership and a power of Attorney is not submitted with the proposal.

g. Where there is an incomplete or ambiguous listing of joint contractors and/or subcontractors the proposal may be rejected. All work which is not listed as being performed by joint contractors and/or subcontractors must be performed by the bidder with his own employees. Additions to the list of joint contractors or subcontractors will not be allowed. Whenever there is a doubt as to the completeness of the list, the bidder will be required to submit within five (5) working days, a written confirmation that the work in question will be performed with his own work force. Whenever there is more than one joint contractor and/or subcontractor listed for the same item of work, the bidder will be required to either confirm in writing within five (5) working days that all joint contractors or subcontractors listed will actually be engaged on the project or obtain within five (5) working days written releases from those joint contractors and/or subcontractors who will not be engaged.

3.3 AWARD OF CONTRACT--The award of contract, if it be awarded, will be made within sixty (60) consecutive calendar days after the opening of the proposals to the lowest responsible *and responsive* bidder (including the alternate or alternates which may be selected by the Engineer in the case of alternate bids) whose proposal complies with all the requirements prescribed, but in no case will an award be made until all necessary investigations are made. The successful bidder will be notified, by letter mailed to the address shown on the proposal, that his bid has been accepted and that he has been awarded the contract.

No contract will be awarded to any person or firm suspended under the provisions of Chapter 103D-702, Chapter 104 and Chapter 444, Hawaii Revised Statutes as amended.

The contract will be drawn on the forms shown in the Appendix, which will be furnished by the Engineer.

3.4 CANCELLATION OF AWARD--The Department reserves the right to cancel the award of any contract at any time before the execution of said contract by all parties without any liability to the awardee and to any other bidder.

3.5 RETURN OF BID SECURITY--All **bid securities**, except those of the four (4) lowest bidders, will be returned following the opening and checking of the proposals. The retained **bid securities** of the remaining two (2) lowest bidders will be returned within five (5) working days following the execution of contract. The successful bidder's **bid security** will be returned after a satisfactory contract bond has been furnished and the contract has been executed.

3.6 ***REQUIREMENT OF PERFORMANCE AND PAYMENT BONDS--Performance and Payment Bonds shall be required for contracts exceeding $25,000.*** At the time of the execution of the contract, the successful bidder shall file good and sufficient ***performance and payment bonds*** on the form furnished by the Department (see Appendix), ***each in an amount equal to one hundred percent (100%) of the amount of the contract price unless otherwise stated in the solicitation of bids. Acceptable performance and payment bonds shall be limited to the following:***

a. ***Surety bond underwritten by a company licensed to issue bonds in this State; or***

b. *Legal Tender; or*

c. *A certificate of deposit; share certificate; or cashier's, treasurer's, teller's or official check drawn by, or a certified check accepted by, and payable on demand to the State by a bank, a savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.*

1) *These instruments may be utilized only to a maximum of $100,000.*

2) *If the required security or bond amount totals over $100,000, more than one instrument not exceeding $100,000 each and issued by different financial institutions shall be acceptable.*

If the contractor fails to deliver the required performance and payment bonds, the contractor's award shall be cancelled, its bid security enforced and award of the contract shall be made to the next lowest bidder.

3.7 EXECUTION OF THE CONTRACT--*The contract shall be signed by the successful bidder and returned, together with satisfactory performance and payment bonds, within ten (10) calendar days after the bidder is awarded the contract for execution or within such further time as the Manager-Chief Engineer may allow.* No proposal or contract shall be considered binding upon the State until the contract has been fully and properly executed by all parties thereto and the Comptroller of the State has endorsed thereon his certificate, as required by Section *103D-309*, Hawaii Revised Statutes, that there is an available unexpended appropriation or balance of an appropriation over and above all outstanding contracts sufficient to cover the State's amount required by such contract.

On any individual award totalling less than *$25,000.00*, the State reserves the right to execute the contract by the issuance of a State Purchase Order. Acceptance shall result in a binding contract between the parties without further action by the State. Executing the contract Purchase Order shall not be deemed a waiver of these specification requirements.

3.8 FAILURE TO EXECUTE THE CONTRACT--If the Bidder to whom a contract is awarded shall fail or neglect to enter into the contract and to furnish satisfactory security within ten (10) calendar days after such award or within such further time as the Manager-Chief Engineer may allow, the award shall be cancelled

and the *bid security* shall be declared forfeited. The *bid security* shall thereupon become a realization of the State, not as a penalty, but in liquidation of the damages sustained. The Board may thereupon award the contract to the next lowest responsible bidder or may call for new bids, whichever method he may deem is to the best interest of the State.

3.9 NOTICE TO PROCEED--After the contract is fully executed and signed by the Engineer, the Contractor will be sent a formal "Notice to Proceed" advising the Contractor of the date on which he may proceed with the work. The Contractor shall be allowed ten (10) consecutive working days from said date to begin his work. In the event that the Contractor refuses or neglects to start the work, the Engineer may terminate the contract in accordance with Subsection 7.23. **"TERMINATION OF CONTRACT"**.

The Contractor may commence his operations prior to receipt of a formal notice to proceed, **provided he makes a written request and receives approval from the Engineer in writing**. All work performed shall be conducted in accordance with Subsection 7.1 "PROSECUTION OF THE WORK".

In certain cases, the State, with agreement of the Contractor, may issue a "Notice to Proceed" before full execution of the contract and concurrently with the notice of "Award".

In the event the Notice to Proceed is not issued within 180 days after the opening date of the proposals, the Contractor may submit a claim for increased labor, material and overhead costs which are directly attributable to the project. Such claims shall be accompanied with the necessary documentation to justify the claim.

SECTION 4--SCOPE OF WORK

4.1 INTENT OF CONTRACT--The intent of the contract is to provide for the construction, complete in every detail, of the work described. The Contractor shall furnish all labor, materials, equipment, tools, transportation and supplies required to complete the work in accordance with the plans, specifications and terms of the contract.

4.2 CHANGES AND CLAIMS FOR ADJUSTMENT--The Engineer may at any time, during the progress of the work, by written order, and without notice to the sureties, make changes in the drawings and/or specifications of the contract as may be found to be necessary or desirable. Such changes shall not invalidate the contract or release the surety, and the Contractor agrees to accept the work as changed, as though it had been a part of the original contract.

Unless changes in drawings and/or specifications substantially change the type of the work to be performed or the cost thereof, the altered work shall be performed as a part of the contract and will be paid for at the same contract prices as for other parts of the work.

Any changes will be set forth in a change order. Upon receipt of a change order, the Contractor shall proceed with the changes as ordered. If the Contractor does not agree with any of the terms or conditions or with the amount of the reduction in cost or extra cost to the State provided for in the order, he shall file with the Engineer a written protest setting forth his reasons in detail within *thirty (30) calendar* days after receipt of the change order. The protest shall be determined as provided in Subsection 7.21 **"DISPUTES AND CLAIMS"**; but nothing provided in this clause shall excuse the Contractor from proceeding with the prosecution of the work as changed. Failure to file such protest within the time specified shall constitute agreement on the part of the Contractor with the terms, conditions and amount in the change order.

No claim shall be made by the Contractor for any loss of anticipated profits because of any such changes.

a. *Price Adjustment - Any adjustment in the contract price pursuant to a change or claim in this contract shall be made in one or more of the following ways:*

   1. *By agreement of a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;*

   2. *By unit prices specified in the contract or subsequently agreed upon;*

   3. *By the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract or subsequently agreed upon;*

   4. *In such other manner as the parties may mutually agree; or*

   5. *In the absence of agreement between the parties, by a unilateral determination by the Engineer of the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by the generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126 of the Procurement Code - Interim Rules and Regulations.*

b. Additional Work--New and unforeseen work will be classed as additional work when determined by the contract. In the event portions of such work are determined by the Engineer to be covered by the contract, the remaining portion of such work will be classed as additional work. Additional work also includes work specifically designated as additional or extra work in the plans or specifications. The Contractor shall do such additional work and furnish labor, material and equipment therefor upon receipt of an approved change order or other approved written order of the Engineer; and in the absence of such approved change order or other approved written order of the Engineer, he shall not be entitled to payment for such additional work. Where such additional work is ordered by a written order other than a change order, the Engineer will as soon as practicable issue a change order therefor, compensation for this change order shall be determined as follows:

1. The Contractor shall carefully examine the additional work requested and submit detailed cost breakdowns for material, equipment and labor for the Engineer's approval within **ten (10) consecutive working days** in such written requests or as allowed by the Engineer in a format similar to the one shown in the Appendix. If the project is delayed because of failure on the part of the contractor to submit the cost breakdown within **ten (10) consecutive working days** or as allowed by the Engineer, liquidated damages will be assessed in accordance with Subsection 7.22 **"FAILURE TO COMPLETE THE WORK ON TIME"**.

2. When the total increase in costs does not exceed *fifteen* percent *(15%)* of the original contract price, the adjustment in lump sum price may, at the discretion of the Engineer, be based on the breakdown cost submitted in conformance with Subsection 7.2. "COMMENCEMENT REQUIREMENTS". If the breakdown cost is not used, the adjustment in payment shall be mutually agreed by the Contractor and Engineer *as provided in Subsection 4.2a. "PRICE ADJUSTMENT"*.

3. When the total increases in costs exceed *fifteen* percent *(15%)* of the original contract price, the adjustment in payment for the cost in excess of *fifteen* percent *(15%)* shall be mutually agreed to by the Contractor and Engineer.

4. Should the contractor fail to submit his estimated cost breakdown as requested in Subsection *4.2b.1* **within ten (10) consecutive working days** or if the Engineer finds the estimate or time required to perform the work unreasonable and is unable to reach a mutual agreement, he shall have the right to perform the work on a cost plus basis or by force account as outlined in Subsection 8.4.b. or proceed with the work under a change order based on the Engineer's estimates.

   If the Contractor does not agree with any of the terms or conditions or with the amount of the extra cost to the State provided for in the order, he shall file with the Engineer a written protest setting forth his reasons in detail within *thirty (30) calendar* days after receipt of the change order. The protest shall be determined as provided in Subsection 7.21 **"DISPUTES AND CLAIMS"**; but nothing provided in this clause shall excuse the Contractor from proceeding with the prosecution of the work as changed and refusal to proceed

diligently with the work shall be sufficient reason for termination of the contract in accordance with Subsection 7.23 **"TERMINATION OF CONTRACT"**. *By proceeding with the work, the Contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.*

c. Decreased or Deleted Work--Should it become necessary for the best interest of the State to decrease or delete a portion of the work called for in the contract, a change order shall be issued and a rebate for this change order shall be as outlined as follows:

1. The Contractor shall carefully examine the decreased or deleted work and submit detailed cost breakdowns for applicable reductions in material, equipment and labor, **and for reduction in time**, to the Engineer **for** approval **within ten (10) consecutive working days**, in such written requests or **as** allowed by the Engineer in a format similar to the one shown in the Appendix. **Equitable price adjustments shall also include credits for overhead and profit.** If the project is delayed because of failure on the part of the contractor to submit the cost breakdown within **ten (10) consecutive working days**, liquidated damages will be assessed in accordance with Subsection 7.22 **"FAILURE TO COMPLETE THE WORK ON TIME"**.

2. When the total decrease in costs does not exceed *fifteen* percent *(15%)* of the original contract price, the reduction in lump sum price may, at the discretion of the Engineer, be based on the breakdown cost submitted in conformance with Subsection 7.2 **"COMMENCEMENT REQUIREMENTS"**. If the breakdown cost is not used, the adjustment in payment shall be mutually agreed by the Contractor and Engineer.

3. When the total decreases in costs exceed *fifteen* percent *(15%)* of the original contract price, the reduction in payment for the cost over *fifteen* percent *(15%)* shall be mutually agreed to by the Contractor and Engineer.

4. Should the contractor fail to submit his estimated cost breakdown requested in Subsection *4.2c. 1.* within **ten (10) consecutive working days** or if the Engineer finds the estimate or reduction in time required to perform the work unreasonable and is unable to reach a mutual agreement, he shall have the right to compute the reduction as if the work

involved was performed on a force account basis as outlined in Subsection 8.4 b. or proceed in decreasing or deleting the work under a change order based on the Engineer's estimates.

If the contractor does not agree with any of the terms or conditions or with the amount of the reduction in costs to the State provided for in the order; he shall file with the Engineer a written protest setting forth his reasons in detail within ***thirty (30) calendar*** days after receipt of the change order. The protest shall be determined as provided in Subsection 7.21 **"DISPUTES AND CLAIMS"**; but nothing provided in this clause shall excuse the Contractor from proceeding with the prosecution of the work as changed and refusal to proceed diligently with the work shall be sufficient reason for termination of the contract in accordance with Subsection 7.23. Failure to file such protest within ***thirty (30) calendar days*** shall constitute agreement on the part of the contractor with the terms, conditions and amount in the change order. Should any contract item of the work be deleted by the Engineer in its entirety, in the absence of the contract change order covering such deletion, payment will be made to the contract for actual and direct costs, including a reasonable overhead incurred in connection prior to the date of notification in writing by the Engineer of such deletion, except as hereinafter provided for costs of handling materials.

If acceptable material is ordered by the contractor for the deleted item prior to the date of notification of such deletion by the Engineer and if orders for such material cannot be cancelled, it will be paid for at the actual cost to the contractor, including a reasonable overhead. In such case, the material paid for shall become the property of the State and the cost of any further handling will be paid for as additional work provided in Subsection 4.2b. If the material is returnable to the vendor and the Engineer so directs, the material shall be returned and the contractor will be paid for charges made by the vendor for returning the material, excluding any markup for overhead and profit to the Contractor. The cost of handling returned material will be paid for as additional work as provided in Subsection 4.2b.

d. *Variations in Estimated Costs - Where the quantity of a* <u>*pay item*</u> *in this contract is an estimated quantity and where the actual quantity of such pay item varies more than fifteen percent (15%) above or below the estimated quantity stated in this contract, an adjustment in the contract price shall be made upon demand of either party. The adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred fifteen percent (115%) or below eighty five percent (85%) of the estimated quantity as provided in 4.2b and 4.2c. If the quantity variation is such as to cause an increase in the time necessary for completion, the Engineer shall, upon receipt of a timely written request for an extension of time, prior to the date of final settlement of the contract, ascertain the facts and make such adjustment for extending the completion date as in the judgement of the Engineer the findings justify.*

e. *In the absence of a change order, nothing in this clause shall be deemed to restrict the Contractor's right to pursue a claim as under the contract or for breach of contract.*

SECTION 5--CONTROL OF WORK

5.1 AUTHORITY OF THE ENGINEER--The Engineer shall decide all questions which may arise relating to the quality and acceptability of the materials furnished and work performed, the manner of performance and rate of progress of the work, the interpretation of the plans and specifications, the acceptable fulfillment of the contract on the part of the Contractor, the compensation under the contract and the mutual rights of the parties to the contract. His decisions upon all questions shall be final and conclusive.

The Engineer shall have the authority to enforce and make effective such decisions and orders which the Contractor fails to carry out promptly and diligently.

The Engineer shall have the authority to suspend the work wholly or in part due to the failure of the Contractor to correct conditions unsafe for the workers or the general public; for failure to carry out provisions of the contract; for failure to carry out orders; for such periods as he may deem necessary due to unsuitable weather; for conditions considered unsuitable for the prosecution of the work or for any other condition or reason deemed to be in the public interest.

5.2 SHOP DRAWINGS AND OTHER SUBMITTALS

a. Shop Drawings--The Contractor shall prepare, thoroughly check, and submit to the Engineer such shop drawings as required by the contract. Shop drawings for structural steel and millwork shall consist of fabrication details, erection drawings and other working plans necessary to show the details, dimensions, sizes of members, anchor bolt plans and other information necessary for the complete fabrication and erection of the structure to be constructed. The Contractor shall also furnish, where necessary or required or as requested by the Engineer, shop drawings showing information on the details and dimensions for all miscellaneous installations of material or equipment to be furnished and installed by the Contractor.

At the determination of the Engineer, the Contractor shall submit *either* one (1) set of reproducible transparency and three (3) sets of ozalid prints *or six (6) sets of ozalid prints* of all shop drawings for approval. Full compensation for furnishing the above sets of shop drawings shall be considered as included in the prices paid for the various contract items of work, and no additional allowances will be made therefor. It is the responsibility of the Contractor to submit shop drawings for approval to the Engineer as required at the earliest possible date after the date of *award* in order to meet the construction schedule. Delays caused by the failure of the Contractor to submit shop drawings on a timely basis so as to allow adequate time for review, will not be considered as justifiable reasons for contract time extension.

It shall be expressly understood that approval by the Engineer of the Contractor's shop drawings does not relieve the Contractor of any responsibility for accuracy of dimensions and details and for agreement and conformity of shop drawings with the contract plans and specifications. It is further understood that the approval by the Engineer of the Contractor's shop drawings, whether general or detailed, is a general approval relating only to their sufficiency and compliance with the intention of the contract. **The Contractor shall clearly identify and inform the Engineer in writing of any deviations from the contract documents at the time of submission and shall obtain the Engineer's written approval to the specified deviation prior to proceeding with any work.** The Contractor, at his own risk and expense, may elect to proceed with the work affected by the shop drawings until such time as approval has been formally granted.

b. Descriptive Sheets--The Contractor shall submit to the Engineer eight (8) complete sets of descriptive sheets such as brochures, catalogs, illustrations, etc., which will completely describe the material, product, equipment, furniture or appliances to be used in the project as shown in the plans and specifications. It is the responsibility of the Contractor to submit descriptive sheets for approval of the Engineer as required at the earliest possible date after the date of *award* in order to meet the construction schedule. Delays caused by the failure of the Contractor to submit descriptive sheets as required will not be considered as justifiable reasons for contract time extension.

c. Material Samples and Color Samples--The Contractor shall submit to the Engineer samples of the materials to be used in the project and color selection samples. It is the responsibility of the Contractor to submit material and color samples for approval as required at the earliest possible date after the date of award in order to meet the construction schedule. Delays caused by the failure of the Contractor to submit material and color samples will not be considered as justifiable reasons for contract time extension.

d. The State will review and return shop drawings and other submittals to the Contractor with appropriate comments within a reasonable time.

5.3 COORDINATION OF CONTRACT DOCUMENTS--These General Conditions, drawings, proposals, special provisions, technical specifications, change orders, addenda, and amendments are essential parts of the contract and they are intended to be correlative and to describe and provide for a complete work. Any requirement occurring in one document is as binding as though occurring in all. In the event of conflict or discrepancy the priorities stated in the following subparagraphs shall govern:

a. Addenda shall govern over all other contract documents. Subsequent addenda issued shall govern over prior addenda only to the extent specified.

b. Special Provisions and Proposal shall govern over the General Conditions.

c. Technical Specifications shall govern over drawings.

d. Should an error or conflict appear within the specification, the Contractor shall immediately notify the Engineer. The Engineer shall promptly issue instructions as to procedure. Any requirement occurring in one or more parts of the specifications is as binding as though occurring in all applicable parts.

e. Drawings:

1. General notes shall govern over all other portions of the drawings except as follows:

   Bottom elevations of footings shown on plans shall govern over a general note such as: "All footings shall rest on firm, undisturbed soil and extend a minimum of a certain number of feet into natural or finish grade, whichever is lower." In the event the footing must be lowered below the bottom

elevation shown, the Contractor shall be entitled to additional compensation. In the event the footing is raised above the bottom elevation shown, the State shall be entitled to a credit.

2. Schedules shall govern over all other notes and drawings.

3. Larger scale drawings shall govern over smaller scale drawings.

4. Figured or numerical dimensions shall govern over dimensions obtained by scaling. The drawings when scaled shall be subject to the approval of the Engineer.

5. In cases of discrepancies in the figures or drawings, the discrepancies shall be immediately referred to the Engineer without whose decision said discrepancy shall not be corrected by the Contractor save at his own risk and in the settlement of any complications arising from such adjustment without the consent of the Engineer, the Contractor shall bear all extra expense involved.

6. Where there is a conflict between the architectural sheets and the mechanical or electrical or structural sheets, etc., the conflict shall be considered a discrepancy and the Contractor shall immediately refer same to the Engineer for a decision.

7. Any requirement occurring in one or more of the sheets is as binding as though occurring in all applicable sheets. Items shown on the drawings but not described in the specifications are considered to be included in the total scope of work bid and additional compensation will not be provided. The Contractor is to immediately notify the Engineer of any items shown on the drawings for which a specification is required prior to incorporation of such item into the project.

5.4 INTERPRETATION OF PLANS AND SPECIFICATIONS--Should it appear that the work to be done or any of the matters relative thereto are not sufficiently detailed or explained in the plans and specifications, the Contractor shall apply to the Engineer for such further explanations as may be necessary and shall conform to same as part of the contract, so far as may be consistent with

the original plans and specifications; and in the event of any doubt or question arising respecting the true meaning of the plans and specifications, reference shall be made to the Engineer whose decision thereon shall be final.

5.5 COOPERATION BETWEEN THE CONTRACTOR AND THE DEPARTMENT

a. Plans and Specifications--The Contractor shall have available on the work site, at all times, one copy each of said plans and specifications; he shall give the work the constant attention necessary to facilitate the progress thereof and shall cooperate with the Engineer, his inspectors, and other Contractors in every possible way.

b. Order by the Engineer--Any order given by the Engineer, not otherwise required by the specifications to be in writing, will on request of the Contractor be given or confirmed by the Engineer in writing.

c. Superintendent--*The Superintendent* shall be present at the site of the work at all times, while work is being performed under the contract. **If the Superintendent is not present at the site of work, the Engineer shall have the right to suspend the work as described under Subsection 7.20 "SUSPENSION OF WORK".**

d. Engineering Work--The Contractor shall, subject to approval of the Engineer, properly and accurately lay out the work, perform all engineering work, and furnish all engineering materials and equipment required to establish and maintain all lines and grades called for in the plan or required in the progress of construction, unless otherwise noted in the specifications. The Contractor will be held definitely and absolutely responsible for any errors in lines, grades or elevations and shall at once, on instruction from the Engineer, correct and make good such errors or any errors, or faults in the work resulting from errors in engineering performed under the requirements of his contract to the entire satisfaction of the Engineer. Full compensation for the work shall be included in the prices paid for contract items of work. No additional allowance will be made for the correction of incorrect engineering work.

The Engineer shall furnish the requisite bench elevations and shall indicate to the Contractor the

lines and dimensions required by the plans. He will also check and pass upon all engineering work as described above, and his decision as to what work is required, the methods to be employed and the satisfactory performance of the same shall be final.

The Contractor shall verify all lines, levels, and elevations indicated on the drawings before any excavation, or construction begins. Any discrepancy shall be immediately brought to the attention of the Engineer, and any change shall be made in accordance with his instruction.

All lines and grades shall be verified and established by a licensed surveyor or civil engineer.

e. Use of Structure--The Department shall have the right, at any time during construction of the structure or structures, to enter same for the purpose of installing by government labor or by any other Contractor any necessary work in connection with the installation of facilities, it being mutually understood and agreed, however, that the Contractor and the Department will, so far as possible work to the mutual advantage of both, where their several works in the above mentioned or in unforeseen instances touch upon or interfere with each other. The Engineer shall allocate the work and designate the sequence of construction in case of controversy between Contractors on separate projects under State jurisdiction.

The Department shall also have the right to use the structure, equipment or any part thereof, at any time after it is considered by the Engineer as available. In the event that the structure, equipment or any part thereof is so used, the State shall be responsible for all expenses incidental to such use and any damages resulting therefrom.

Equipment warranty will be assumed by the State upon beneficial occupancy.

If the Department enters the structure for construction and/or occupancy and the Contractor is delayed because of interference by the Department or by extra work resulting from damage which the Contractor is not responsible for, the Contractor shall be granted an extension of time in accordance with Subsection 7.18 "CONTRACT TIME". However, if such use increases the cost or delays the completion of the remaining portions of work, the Contractor shall be entitled to such extra compensation or extension of time or both, as the State may determine to be proper. Any additional work

necessary will be paid in accordance with Subsection 8.4 "PAYMENT FOR ADDITIONAL WORK".

5.6 INSPECTION--The Engineer and Inspectors employed by the Department shall at all times have access to the work during its construction and shall be furnished with every reasonable facility for ascertaining at any time that the materials and the workmanship are in accordance with the requirements and intentions of the contract. All work done and all materials furnished shall be subject to inspection and approval.

Such inspection and approval may extend to all or part of the work, and to the preparation, fabrication or manufacture of the materials to be used.

The Inspector shall have the authority to suspend operations of any work being improperly performed by issuing a written order giving the reason for shutting down the work. Should the Contractor disregard such written order after placing it in the hands of the Superintendent, the Inspector shall have the right to leave the job immediately. Work done during the absence of the Inspector will not be accepted nor paid for.

The inspection of the work shall not relieve the Contractor of any of his obligations to fulfill his contract as prescribed; and defective work shall be made good and unsuitable materials may be rejected, notwithstanding that such defective work and materials have been previously overlooked by the Engineer and accepted or estimated for payment.

Projects financed in whole or in part with Federal funds shall be subject to inspection at all times by the Federal Agency involved.

5.7 REMOVAL OF DEFECTIVE AND UNAUTHORIZED WORK--All work which has been rejected as not conforming to the requirements of the contract shall be remedied or removed and replaced by the Contractor in an acceptable manner and no compensation will be allowed him for such removal or replacement. Any work done beyond the work limits shown on the plans and specifications or established by the Engineer or any additional work done without written authority will be considered as unauthorized and will not be paid for. Work so done may be ordered removed at the Contractor's expense. Upon failure on the part of the Contractor to comply promptly with any order of the Engineer made under the provisions of this subsection, the Engineer shall have authority to cause defective work to be remedied or removed and replaced and unauthorized work to be removed and to deduct the costs from any monies due or to become due the Contractor.

5.8 VALUE ENGINEERING INCENTIVE--On projects with contract amounts in excess of $100,000, the following Value Engineering Incentive Clause shall apply to allow the Contractor to share in cost savings that ensue from cost reduction proposals submitted by him.

a. The Value Engineering Incentive Clause applies to all Value Engineering Change Proposals (cost reduction proposals, hereinafter referred to as VECP) initiated and developed by the Contractor for changing the drawings, designs, specifications or other requirements of this contract. This clause does not, however, apply to any VECP unless it is identified as such by the Contractor at the time of its submission to the Engineer.

b. All VECP must:

   1. Result in a savings to the State by providing less costly items than those specified herein without impairing any of their essential functions and characteristics such as service life, reliability, economy of operations, ease of maintenance, and desired appearance; and

   2. Require, in order to be applied to this contract, a change order to this contract.

c. The VECP will be processed expeditiously and in the same manner as prescribed for any other proposal which would likewise necessitate issuance of a contract change order. As a minimum, the following information will be submitted by the Contractor with each proposal:

   1. A description of the difference between the existing contract requirements and the VECP, and the comparative advantages and disadvantages of each;

   2. An itemization of the requirements of the contract which must be changed if the VECP is adopted and a recommendation as to how to make each such change;

   3. An estimate of the reduction in performance costs that will result from adoption of the VECP taking into account the costs of implementation by the Contractor. including any amounts attributable to subcontracts, and the basis for the estimate;

   4. A prediction of any effects the VECP would have on other costs to the State, such as State furnished

property costs, costs of related items, and costs of maintenance and operation;

5. A statement of the time by which a change order adopting the VECP must be issued so as to obtain the maximum cost reduction during the remainder of this contract noting any effect on the contract time; and

6. The dates of any previous submissions of the VECP, the numbers of any Government contracts under which submitted and the previous actions by the Government, if known.

d. The State shall not be liable for any delays in acting upon, or failure to act upon any proposal submitted pursuant to this clause. The decisions of the Engineer as to the acceptance of any VECP under this contract shall be final. Unless and until a change order applies a VECP to this contract, the Contractor shall remain obligated to perform in accordance with the terms of the existing contract. The Engineer may accept in whole or in part any VECP submitted pursuant to this clause by issuing a change order which will identify the VECP on which it is based.

e. If a VECP submitted pursuant to this clause is accepted under this contract, an equitable adjustment in the contract price and in any other affected provisions of this contract shall be made in accordance with this clause and the "Changes" clause of this contract. The equitable adjustment shall first be established by determining the effect on the Contractor's cost of performance, taking into account the Contractor's cost of implementing the change (including any amount attributable to subcontracts). The contract price shall then be reduced by the total estimated decrease in the cost of performance minus fifty percent (50%) of the difference between the amount of such total estimated decrease and any ascertainable costs to the State which must be incurred to apply to VECP to this contract.

f. Cost reduction proposals submitted under the provisions of any other contract also may be submitted under this contract for consideration pursuant to the terms of this clause.

g. The Contractor may restrict the Government's right to use any sheet of a VECP or of the supporting data, submitted pursuant to this clause in accordance with the following terms, marked on such sheet:

"This data furnished pursuant to a value engineering incentive clause shall not be disclosed outside the Government, or be duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under said clause. This restriction does not limit the Government's right to use information contained in this data if it is or has been obtained from another source, or is otherwise available, without limitations. If such a proposal is accepted by the State by issuance of a change order under the 'Changes' clause of said contract after the use of this data in such an evaluation, the Government shall have the right to duplicate, use and disclose any data pertinent to the proposal as accepted, in any manner and for any purpose whatsoever, and have others so do."

h. In the event of acceptance of a value engineering proposal the Contractor hereby grants to the Government all rights to use, duplicate or disclose in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so, any data reasonably necessary to fully utilize such proposals. Contract modifications made as a result of this clause will state that they are made pursuant to it.

i. VECP shall conform to rules and regulations promulgated in accordance with the law.

SECTION 6 -- CONTROL OF MATERIALS AND EQUIPMENT

6.1 MATERIALS AND EQUIPMENT -- The contractor shall be required to install material and equipment as called for in the plans and specifications or as qualified in subsequent addenda which change the plans and specifications.

6.2 SOURCE OF SUPPLY AND QUALITY OF MATERIALS -- Only materials conforming to the requirements of the specifications and having the approval of the Engineer shall be used on the work. In order to expedite the inspection and testing of materials, the Contractor shall notify the Engineer of his proposed sources of materials within 10 days from the date of award of the contract.

At the option of the Engineer, the materials may be approved by the Engineer at the source of supply before delivery is started. Representative preliminary samples of the character and quantity prescribed shall be submitted by the Contractor or producer for examination and tested in accordance with the methods referred to under samples and tests.

All materials proposed to be used may be inspected and tested at any time, and if it is found that material that was once approved is unacceptable at any time, the Contractor shall furnish approved material from other sources. No material which after approval, has in any way become unfit for use shall be used in the work.

6.3 SUBSTITUTION OF MATERIALS AND EQUIPMENT

a. Before Bid Opening--In any section of the specifications and/or plans where one of more brand names of materials or equipment are specified to indicate a quality, style, appearance or performance, the bidder shall base his bid on one of the specified brand names.

b. After Bid Opening--Substitution of material or equipment may be allowed after the bid opening date only:

1. If the specified item is delayed by a lengthy strike in the factory or other unforeseeable contingency beyond the control of the Contractor which would cause an abnormal delay in the project completion; or

2. If all specified items are found to be unusable or unavailable due to change or other circumstances; or

3. If the Contractor is willing to provide a more recently developed or manufactured model of material or equipment which the Engineer determines upon his sole discretion to be equal or better than the one specified or prequalified.

A substitution request, regardless of reason, shall be fully explained in writing, by the Contractor including his justification for said request, quantities and unit prices involved, quotations and such other documents as are deemed necessary to support the request. Any savings in cost will be rebated to the State and any additional cost for the substituted items will be paid for by the Contractor.

The above shall not be construed to mean that substitutions for brand name specified materials and equipment will be allowed; the Engineer reserves the right to reject and deny any request he deems irregular or not in the best interest of the State and a request for substitution shall not in any way constitute a justification for an extension of contract time.

6.4 ***ASBESTOS CONTAINING MATERIALS*** *-- The use of asbestos containing materials or equipment is prohibited under this contract. The Contractor shall insure that all materials and equipment incorporated in the project are asbestos-free.*

6.5 TEST SAMPLES--The Engineer may require any or all materials to be subject to tests by means of samples or otherwise as he may determine. The Contractor shall afford such facilities as the Engineer may require for collecting and forwarding samples and shall not make use of or incorporate in the work any material represented by the samples until all required tests have been made and the material accepted. The Contractor in all cases shall furnish the required samples without charge. Where samples are required from the completed work, the Contractor shall cut and furnish for tests, samples cut from the completed work. The

areas of samples so removed shall be replaced with identical material and refinished. No additional compensation will be allowed for furnishing test samples and replacing the areas with new material.

Tests of materials will be made by the Engineer in accordance with the latest standard methods of the American Society for Testing and Materials, as amended prior to date of the contract unless otherwise provided. In cases where definite identification of a particular test method is necessary or specifications and serial numbers are stipulated, the test shall be construed to mean the method given in the above-mentioned publication for sampling and testing the particular material or product involved. When the abbreviated reference "ASTM" is used, it shall be considered to refer to the appropriate section of the above-mentioned publication. Where "AASHTO" specifications and serial numbers are stipulated, the reference shall be construed to mean the specifications and serial numbers of the latest American Association of State Highway and Transportation Officials as amended prior to date of the contract.

It is understood that the Department reserves the right to retest all materials which have been tested and accepted at the source of supply after the same has been delivered to the work site and to reject all materials which, when retested, do not meet the requirements of the contract.

6.6 MATERIAL SAMPLES--The Contractor shall furnish for the approval of the Engineer, any samples required by the specifications or that may be requested by the Engineer of any and all materials or equipment he proposes to use. Unless specifically required, samples are not to be submitted with the bid.

No materials or equipment of which samples are required to be submitted for approval shall be used on the work until such approval has been given by the Engineer, except at the Contractor's risk and expense.

Each sample submitted shall have a label indicating the material represented, its place of origin, and the names of the producer, the Contractor and the building or work for which the material is intended. Samples of finished materials shall be so marked as to indicate where the materials represented are required by the drawings or specifications.

A letter in duplicate by the Contractor shall accompany each shipment of samples submitted and shall contain a list of the samples, the name of the building or work for which the materials

are intended and the brands of the materials and names of the manufacturers.

The approval of any sample shall be only for the characteristics or for the uses named in such approval and for no other purpose. Approval of a sample shall not be construed as to change or modify any contract requirement.

All samples will be provided by the Contractor at no extra cost to the project or to the State.

6.7 NON-CONFORMING MATERIALS--*All materials not conforming to the requirements of these specifications, whether in place or not, shall be rejected and removed immediately from the site of work unless otherwise permitted by the Engineer in writing. No rejected material which has subsequently been made to conform shall be used unless and until written approval has been given by the Engineer. Upon failure on the part of the Contractor to comply forthwith with any order of the Engineer made under the provisions of this subsection, the Engineer shall have the authority to remove and replace non-conforming materials and to deduct the cost of removal and replacement from any money due or about to become due the Contractor.*

6.8 HANDLING MATERIALS--All materials shall be handled in such a manner as to preserve their quality and fitness for work. Aggregates shall be transported from the storage site to the work in tight vehicles so constructed as to prevent loss or segregation of materials after loading and measuring in order that there may be no inconsistencies in the quantities of materials intended for incorporation in the work as loaded, and the quantities as actually received at the place of operations.

6.9 STORAGE OF MATERIALS -- Materials shall be stored so as to insure the preservation of their quality and fitness for the work. Unless otherwise provided, the portion of the project site not required for public travel may be used for storage purposes and for the placing of the Contractor's plant and equipment, and any additional space required shall be provided by the Contractor at his expense. The Contractor shall be responsible for security and maintaining the storage areas and shall restore these areas to their original undamaged condition, in the event any damage results from the contraction operations. The Contractor is also responsible to provide security and protection for all stored items and shall replace at his own expense any items damaged,

destroyed or removed from the storage area, due to; extreme weather, theft, vandalism, acts of God or any other reason.

When considered necessary by the Engineer, material shall be placed on wooden platforms or other hard, clean surfaces. They shall be placed under cover when so directed. Stored materials shall be so located as to facilitate their prompt inspection.

6.10 PROPERTY RIGHTS IN MATERIALS -- Nothing in these specifications or contract shall be construed as vesting in the Contractor any right to the materials used after they have been attached or affixed to the work.

6.11 ASSIGNMENT OF ANTITRUST CLAIMS FOR OVERCHARGES FOR GOODS AND MATERIALS PURCHASED

a. *Vendor and purchaser recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, vendor hereby assigns to purchaser any and all claims for such overcharges as to goods and materials purchased in connection with this order or contract, except as to overcharges which result from antitrust violations commencing after the price is established under this order or contract and which are not passed on to the purchaser under an escalation clause.*

b. *Contractor and owner recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the owner. Therefore, contractor hereby assigns to owner any and all claims for such overcharges as to goods and materials purchased in connection with this order or contract, except as to overcharges which result from antitrust violations commencing after the price is established under this order or contract and any change order. In addition, contractor warrants and represents that each of his first tier suppliers and subcontractors shall assign any and all such claims to owner, subject to the aforementioned exception.*

SECTION 7--PROSECUTION AND PROGRESS

(Including Legal Relations And Responsibility)

7.1 PROSECUTION OF THE WORK--Upon approval of the contract by the Engineer, a Notice to Proceed will be given to the Contractor. The Notice to Proceed will indicate the date the Contractor is expected to begin the construction and from which date contract time will be charged.

The Contractor shall begin work within ten (10) consecutive working days from the specified date, and he shall diligently prosecute the same to completion within the contract time allowed. The Contractor shall notify the Engineer at least three (3) consecutive working days before beginning work.

At any subsequent suspension and resumption of work, the Contractor shall notify the Engineer at least twenty-four (24) hours before beginning actual operations.

The Contractor shall not begin work before the date specified in the Notice to Proceed without written approval. Should the Contractor begin work before receiving the Notice to Proceed, any work performed by him in advance of the specified date will be considered as having been done by him at his own risk and as a volunteer and subject to the following conditions:

a. Under no circumstances shall the Contractor commence construction operations until he has notified the Engineer of his intentions and has been advised by the Engineer in writing that the project site is available to the Contractor. The project site will not be made available until the Contractor has complied with commencement requirements under Subsection 7.2 **"COMMENCEMENT REQUIREMENTS"**.

b. On commencing operations, the Contractor shall take all precautions required for public safety and shall observe all provisions in these specifications and the special provisions relating thereto.

c. In the event the contract is not approved, the Contractor shall, at his own expense, do such work as is necessary to leave the site in a neat condition to the satisfaction of the Engineer. The Contractor shall not be reimbursed for any expenses incurred for such work.

d. All work done prior to the approval of the contract shall be performed in accordance with the contract documents and will, if the contract is approved, be considered authorized work and will be paid for as provided in the contract.

For repairs and/or renovations of existing buildings which are occupied by the user agency, the Contractor shall not commence with the physical construction unless all or sufficient amount of materials are available for either continuous construction or completion of a portion of the work. When construction is started, the Contractor shall work expeditiously and pursue the work diligently. If only a portion of the work is to be completed, the Contractor shall leave the area safe and usable for the user agency until he is ready to start construction again. No provision of this article shall be construed as entitling the contractor to additional working days beyond that specified by the contract.

7.2 COMMENCEMENT REQUIREMENTS--Prior to beginning operations, the Contractor shall submit the following to the Engineer:

a. Superintendent or authorized representative on the job site (See Subsection 5.5 "COOPERATION BETWEEN THE CONTRACTOR AND THE DEPARTMENT").

b. Working hours on the job (See Subsection 7.3 "NORMAL WORKING HOURS").

c. Breakdown cost for monthly estimates.
Unless the proposal requires unit price bids on all items in this project, the successful bidder will be required, after the award of contract, to submit a schedule of prices for the various items of construction which make up portions of the project included in the contract. For projects involving more than a single building and/or facility, the breakdown cost shall reflect a separate schedule of prices for the various items of construction for each building and/or facility. The sum of the prices submitted for the various items must equal the lump sum bid in the bidder's proposal. This schedule will be subject to the approval of the Engineer and he reserves the right to reject same and require the bidder to submit another or

several other schedules if in his opinion the prices are unbalanced. This schedule of prices shall be used (1) for the purpose of determining the value of monthly payments due the contractor for work installed complete in place; and (2) may be used as the basis for determining cost and credit of added or deleted items of work, respectively.

The **Contractor** shall estimate at the close of each month the percentage of work completed under each of the various construction items during such month and submit the estimate to the **Engineer for review and approval.** The Contractor shall be paid such percentage of the price established for each item less the percentages of retention as provided in Subsection 8.5 **"PROGRESS AND/OR PARTIAL PAYMENTS".**

d. Proof of insurance coverage for the following:

1. **Builder's Risk**

(a) *Building Renovation Contract--The Contractor shall take out a policy of builder's risk insurance in the amount equivalent to the contract amount or as otherwise specified in the bid proposal, with the State named as additional insured under each policy, covering all work, labor and materials furnished by such Contractor and all his Subcontractors against loss by fire, windstorm, lightning, explosion and other perils covered by the Extended Coverage Endorsement, and vandalism and malicious mischief.*

(b) Site Development--The Contractor is not required to obtain Builder's risk insurance for site development contracts. However, if any building or structure is renovated on site development contracts, item (a) Building Renovation Contract, above, shall apply.

2. Workers' Compensation--The Contractor shall, in accordance with Sections 386-121 to 386-129 Hawaii Revised Statutes, inclusive, take out adequate workers' compensation insurance for all of his employees who will be engaged in work at the site of the project, and in case any part of such Contractor's contract is sublet, the Contractor

will require his subcontractor to maintain such insurance for all the subcontractor's employees who will be so engaged, unless the latter's employees are protected by the principal Contractor's insurance.

3. Public Liability and Property Damage--The Contractor shall take out and maintain during the life of this contract **broad form** public liability (Bodily Injury) and **broad form** property damage **liability** insurance **in a combined single limit not less than $1,000,000** to protect such Contractor and all of his subcontractors from claims for damages for personal injury, accidental death and property damage which may arise from operations under this contract, whether such operations be by himself or by any subcontractor or anyone directly or indirectly employed by either of them.

4. Whenever there is a conflict between the State General Conditions and the Federal General Conditions with respect to amount of insurance coverage, the higher amount of such insurance coverage shall prevail.

5. The Contractor shall obtain from **admitted** insurance companies or in the case of worker's compensation coverage, a qualified self insurer as provided for under the worker's compensation statutory law insurance as required herein, and the Contractor shall maintain this insurance in full force and effect until the work to be performed has been substantially complete in accordance with subsection 7.26 or otherwise required.

e. Permits and Licenses--**The State or its representative will process Building Permit applications. The Contractor shall pick up the pre-processed Building Permit at the appropriate County agency and pay the required fee for it. If the Building Permit application is not processed by the State, the Contractor shall process the Building Permit application and pay all application and permit fees. Other permits as may be necessary for the proper execution of the work such as grading permits, utility connection permits and elevator installation permits, etc. shall be obtained and paid for by the Contractor.**

Until such time as the above items are approved, the Contractor shall not be allowed to commence on any operations.

7.3 NORMAL WORKING HOURS--Prior to beginning operations, the Contractor shall notify the Engineer in writing of the time in hours and minutes, A.M.and P.M., respectively, at which he desires to begin and end the day's work unless otherwise established by the State.

If the Contractor desires to change his working hours, he shall request the Engineer's approval three (3) consecutive working days prior to the date of effecting the change.

7.4 HOURS OF LABOR--*(Section 104-2 Hawaii Revised Statutes) - No laborer or mechanic employed on the job site of any public work of the State or any political sub-division thereof shall be permitted or required to work on Saturday, Sunday or a legal holiday of the State or in excess of eight hours on any other day unless the laborer or mechanic receives overtime compensation for all hours worked on Saturday, Sunday and a legal holiday of the State or in excess of eight hours on any other day. For the purposes of determining overtime compensation under this subsection, the basic hourly rate of any laborer or mechanic shall not be less than the basic hourly rate determined by the Department of Labor and Industrial Relations to be the prevailing basic hourly rate for corresponding classes of laborers and mechanics on projects of similar character in the State.*

7.5 PREVAILING WAGES--(Section 104-2 Hawaii Revised Statutes)--The Contractor or his subcontractor shall pay all mechanics and laborers employed on the job site, unconditionally and not less often than once a week, and without deduction or rebate on any account except as allowed by law, the full amounts of their wages including overtime, accrued to not more than five (5) working days prior to the time of payment, at wage rates not less than those stated in the contract, regardless of any contractual relationship which may be alleged to exist between the Contractor and subcontractor and such laborers and mechanics. The wages stated in the contract shall not be less than the wages which the Director of Labor and Industrial Relations has determined to be the prevailing wages for corresponding classes of laborers and mechanics on projects of similar character in the State.

The rates of wages to be paid shall be posted by the Contractor in a prominent and easily accessible place at the job site and a copy of such wages required to be posted shall be given to each laborer and mechanic employed under the contract by the Contractor at the time he is employed thereunder, provided that where there is a collective bargaining agreement, the

Contractor does not have to provide his employees the wage rate schedules.

The Engineer may withhold from the Contractor so much of the accrued payments as the Engineer may consider necessary to pay to laborers and mechanics employed by the Contractor or any subcontractor on the job site. The accrued payments withheld shall be the difference between the wages required by this contract or specifications and the wages actually received by such laborers or mechanics.

7.6 FAILURE TO PAY REQUIRED WAGES--(Section 104-4, Hawaii Revised Statutes)--If the Department finds that any laborer or mechanic employed on the job site by the contractor or any subcontractor has been or is being paid wages at a rate less than the required rate by the contract or specifications, or has not received his full overtime compensation, the Department may, by written notice to the Contractor, terminate his right, or the right of any subcontractor, to proceed with the work or with the part of the work in which the required wages or overtime compensation have not been paid and may complete such work or part by contract or otherwise, and the Contractor and his sureties shall be liable to the Department for any excess costs occasioned thereby.

7.7 PAYROLLS AND PAYROLL RECORDS--(Section 104-3 Hawaii Revised Statutes)--A certified copy of each weekly payroll shall be submitted to the Engineer within seven (7) calendar days after the end of each weekly payroll period. **Failure to do so on a timely basis shall be cause for disqualification from bidding in accordance with Section 2.11.** The Contractor shall be responsible for the submission of certified copies of payrolls of all subcontractors. The certification shall affirm that payrolls are correct and complete, that the wage rates contained therein are not less than the applicable rates contained in the wage determination decision contained herein and also that the classifications set forth for each laborer and mechanic conform with the work he performed.

Payroll records for all laborers and mechanics working at the site of the work shall be maintained by the General Contractor and his subcontractors, if any, during the course of the work and preserved for a period of three (3) years thereafter. Such records shall contain the name of each employee, his correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid. Such records shall be made available for inspection at a place designated by the Engineer, the Director of Labor and any

authorized persons who may also interview employees during working hours on the job site.

7.8 OVERTIME AND NIGHT WORK--Overtime work shall be considered as work performed in excess of eight (8) hours in any one day or work performed on Saturday, Sunday or legal holiday of the State. Overtime and night work are permissible when approved by the Engineer in writing, or as called for elsewhere within the specifications.

The Contractor shall inform the Engineer in writing at least two (2) working days in advance as to exactly what specific work is to be done during any overtime and night period to insure that proper inspectional personnel will be available.

In the event that work other than that contained in the above notification is performed and for which the Engineer determines State inspectional services were necessary but not available because of the lack of notification, the Contractor may be required to remove all such work and perform the work in the presence of State inspectional personnel.

Any hours worked in excess of the normal eight (8) working hours per day or on Saturdays, Sundays or legal State holidays will not be considered a working day.

The State hereby reserves the right to cancel the overtime, night, Saturday, Sunday or legal State holiday work when it is found that work during these periods are detrimental to the public welfare or the user agency.

7.9 OVERTIME AND NIGHT TIME PAYMENT FOR STATE INSPECTION SERVICE--Whenever the contractor's operations require the State's inspectional and engineering personnel to work overtime or at night, the Contractor shall reimburse the State for the cost of such services unless otherwise instructed in the Contract. The Engineer will notify the Contractor of the minimum number of required Department employees and other personnel engaged by the State prior to the start of any such work. The costs chargeable to the Contractor shall include but not be limited to the following:

a. The cost of salaries including overtime and night time differential for the engineering and inspectional personnel as determined by the State. In addition to the cost of the salaries as determined above, the Contractor shall reimburse the State's share of contributions to the employee's retirement, medical

plan, social security, vacation, sick leave, worker's compensation funds, per diem, and other applicable fringe benefits and overhead expenses.

b. The transportation cost incurred by the engineering and inspectional personnel based on established rental rates or mileage allowance in use by the Department for the particular equipment or vehicle.

c. Fees and other costs billed the State by Consultants engaged on the project for overtime and/or night time work.

The monies due the Department for engineering and inspectional work and use of vehicles and equipment as determined hereinabove shall be deducted from the monies due or to become due the Contractor. In any event, the Contractor shall not pay the Department employees directly.

7.10 LIMITATIONS OF OPERATIONS--The Contractor shall at all times conduct the work in such manner and in such sequence as will insure the least practicable interference with traffic and passageways and he shall have due regard for furnishing convenient detours and providing for the handling of traffic.

In the event that other contractors are also employed on the job site, the Contractor shall arrange his work and dispose of his materials so as not to interfere with the operations of the other contractors engaged upon adjacent work and to join his work to that of others and existing buildings in a proper manner, and in accordance with the spirit of the plans and specifications, and to perform his work in the proper sequence in relation to that of others, all as may be directed by the Engineer.

Each Contractor shall be held responsible for any damage done by him or his agents to the work performed by another contractor. Each Contractor shall so conduct his operations and maintain the work in such condition that adequate drainage shall be in effect at all times.

In the event that the Contractor fails to prosecute his work as provided above or disregards the directions of the Engineer, the Engineer will suspend the work until such time as the Contractor provides for the prosecution of the work with minimum interference to traffic or other contractors.

7.11 ASSIGNMENT *OR CHANGE OF NAME*

a. *Assignment*--The Contractor shall not sublet, sell, transfer, assign or otherwise dispose of this contract or any part hereof or any right, title or interest herein or any monies due or to become due hereunder without the prior written consent of the Comptroller.

The Contractor may assign money due or to become due him under the contract and such assignment will be recognized by the Department, if given proper notice thereof, to the extent permitted by law; but any assignment of monies shall be subject to all proper set-offs in favor of the State and to all deductions provided for in the contract and particularly all monies withheld whether assigned or not, shall be subject to being used by the Department for the completion of the work in the event that the Contractors should be in default therein.

b. *Recognition of a Successor in Interest; Assignment - When in the best interest of the State, a successor in interest may be recognized in an assignment agreement in which the transfer and the transferee and the State shall agree that:*

1. *The transferee assumes all of the transferor's obligations;*

2. *The transferor remains liable for all obligations under the contract but waives all rights under the contract as against the State; and*

3. *The transferor shall continue to furnish, and the transferee shall also furnish, all required bonds.*

c. *Change of Name--When a contractor requests to change the name in which it holds a contract with the State, the Comptroller shall, upon receipt of a document indicating such change of name (for example: an amendment to the articles of incorporation of the corporation), enter into an agreement with the requesting contractor to effect such a change of name. The agreement changing the name shall specifically indicate that no other terms and conditions of the contract are thereby changed.*

d. *All change of name or novation agreements effected hereunder other than by the Comptroller shall be reported to the Comptroller within thirty (30) days of the date that the agreement becomes effective.*

e. *Notwithstanding the provisions of paragraphs 1. through 3. above, when a contractor holds contracts with more than one purchasing agency of the State, the novation or change of name agreements herein authorized shall be processed only through the Comptroller.*

7.12 LAWS TO BE OBSERVED--The Contractor at all times shall observe and comply with all Federal, State and local laws or ordinances, rules and regulations which in any manner affect those engaged or employed in the work, the materials used in the work, and the conduct of the work. The Contractor shall also comply with all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the work. Any reference to such laws, ordinances, rules and regulations shall include any amendments thereto.

The Contractor shall protect and indemnify the State and its Departments and Agencies and all their officers, representatives, employees or agents against any claim or liability arising from or based on the violation of any such laws, ordinances, rules and regulations, orders or decrees, whether such violation is committed by the Contractor or his Subcontractor or the employee of either or both. If any discrepancy or inconsistency is discovered in the contract for the work in relation to any such laws, ordinances, rules and regulations, orders or decrees, the Contractor shall forthwith report the same to the Engineer in writing.

Attention is directed to the Hawaii Employment Relations Act, Chapter 377, H.R.S., Hawaii Employment Security Law, Chapter 383, H.R.S., Wage and Hour Law, Chapter 387, H.R.S., Payment of Wages, Chapter 388, H.R.S., Industrial Safety, Chapter 376, H.R.S. and Worker's Compensation Law, Chapter 386, H.R.S.

7.13 PATENTED DEVICES, MATERIALS AND PROCESSES--*If the Contractor is required or desires to use any design, device, material or process covered by letters of patent or copyright, the right for such use shall be procured by the Contractor from the patentee or owner. The Contractor and surety shall indemnify and save harmless the State and its Departments and Agencies, any affected third party, or political subdivision from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright in connection with the work to be performed under the contract, shall indemnify the State and its Departments and Agencies for any costs, expenses and damages which it may be obliged to pay by reason of any such infringement at any time during the prosecution or after the completion of the work.*

7.14 SANITARY, HEALTH AND SAFETY PROVISIONS--The Contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of his employees as may be necessary to comply with the requirements of the State and local Boards of Health, or other bodies or tribunals having jurisdiction. Unless otherwise stated in the specifications, the Contractor shall install toilet facilities conveniently located at the job site and maintain same in a neat and sanitary condition for the use of the employees on the job site for the duration of the contract. The toilet facilities shall conform to the requirements of the State Department of Health. The cost of installing, maintaining and removing the toilet facilities shall be considered incidental to and paid for under various contract pay items for work or under the lump sum bids as the case may be, and no additional compensation will be made therefor. These requirements shall not modify or abrogate in any way the requirements or regulations of the State Department of Health.

The following requirements of the Department of Health must be strictly adhered to in the Forest Reserve area:

1. Portable covered receptacles for fecal matter and urine, of the design and number specified by the Department, shall be provided.

2. No employee will be allowed to deposit fecal matter or urine in any place except in these receptacles. Any infringement of this requirement shall result in immediate transfer or discharge of the offender or other disciplinary measures satisfactory to the Engineer.

3. All deposits in these receptacles shall be immediately covered with a chemical solution prescribed by the Department of Health. These receptacles, with their contents, shall be collected and removed for disposal at the close of each working day. The method of disposal must be satisfactory to the Department of Health to prevent contamination of any water supply, stream or other bodies of water.

4. The receptacles shall be thoroughly cleaned with water and the required chemical solution and then returned to their required places for service.

Attention is directed to Federal, State and local laws, rules and regulations concerning construction safety and health standards. The Contractor shall not require any worker to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his health or safety.

7.15 PRESERVATION AND RESTORATION OF PROPERTY, TREES, MONUMENTS, ETC.--The Contractor shall be responsible for the preservation of all public and private property, trees, monuments, etc., and shall use every precaution necessary to prevent damage or injury thereto. The Contractor shall use suitable precaution necessary to prevent damages to pipes, conduits and other underground structures; and shall protect carefully from disturbances or damage all land monuments and property marks until an authorized agent has witnessed or otherwise referenced their location and shall not remove them until directed. The Contractor shall not injure or destroy trees or shrubs nor remove or cut them without proper authority. When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect or misconduct in the execution of the work, or in consequence of the non-execution thereof on the part of the Contractor, such property shall be restored by the Contractor and at the Contractor's expense, to a condition similar or equal to that existing before such damage or injury was done, by repairing, rebuilding or otherwise restoring same, or he shall make good such damage or injury in an acceptable manner. If the Contractor fails to carry out the provisions of this subsection, the Engineer shall have the right to have them carried out and deduct the same from any money due or to become due the Contractor.

7.16 RESPONSIBILITY FOR DAMAGE CLAIMS--*The Contractor and surety shall save harmless the State and its Departments and Agencies and all of their officers, representatives, employees or agents from all suits, actions or claims of any character brought on account of any injuries or damages sustained by any person or property on account of the operations of Contractor; or in consequence of any neglect in safeguarding the work, or through the use of unacceptable materials in the construction of the improvement, or on account of any act or omission by said Contractor or his agents. The Contractor shall indemnify and hold harmless the State and its Departments and Agencies and all of their officers, representatives, employees or agents for damages attributable, whether caused in whole or in part, by any negligence of the Contractor.*

The Contractor agrees that he will not hold the State and its Departments and Agencies and all their officers, representatives, employees or agents, liable or responsible for any losses or damages to third parties from the action of the elements, the nature of the work to be done under these specifications or from any unforeseen obstructions, acts of God, vandalism, fires or encumbrances which may be encountered in the prosecution of the work.

The Contractor guarantees the payment of all just claims for materials, supplies, tools, labor and other just claims against him or any subcontractor in connection with this contract and his bond will not be released by final acceptance and payment by the Department unless all such claims are paid or released, or so much of the monies due or to become due the Contractor, under this contract as shall be considered necessary by the Engineer may be retained by the Department.

The Contractor shall save harmless the State and its Departments and Agencies and all of their officers, representatives, employees or agents from all suits, actions or claims of any character brought on account of any claims or amounts arising or recovered under the Workers Compensation Laws or any other law, by-law, ordinance, order or decree.

Should any suit or claim be filed against the Contractor, the Engineer shall retain, from any monies due to the Contractor such amount or amounts as may be deemed necessary by the said Engineer to satisfy the suit or claim, until such suits or claims have been finally settled and determined, and upon satisfactory evidence of such settlement of such suits or claims, the money retained shall be paid to the Contractor.

7.17 CHARACTER OF WORKERS OR EQUIPMENT--The Contractor shall at all times provide adequate supervision and sufficient labor and equipment for prosecuting the several classes of work to full completion of the project in the manner and within the time required by the contract.

a. Character and Proficiency of Workers--All workers must have sufficient skill and experience to perform properly the work assigned to them. All workmen engaged in special work or skilled work such as bituminous courses of mixtures, concrete pavement or structures, electrical installation, plumbing installation, or in any trade shall have sufficient experience in such work and in the operation of the equipment required to properly and satisfactorily perform all work. All workers shall make due and proper effort to execute the work in the manner prescribed in these specifications; otherwise, the Engineer may take action as prescribed herein.

   Any worker employed on the project by the Contractor or by any subcontractor who, in the opinion of the Engineer or his authorized representative, is not careful and competent, does not perform his work in a proper and skillful manner or is disrespectful, intemperate, disorderly or neglects or refuses to

comply with directions given, or is otherwise objectional shall at the written request of the Engineer, be removed forthwith by the Contractor or subcontractor employing such worker and shall not be employed again in any portion of the work without the written consent of the Engineer. Should the Contractor or subcontractor continue to employ, or again employ such person or persons on the project, the Engineer will withhold all estimates which are or may become due, or the Engineer will suspend the work until such orders are complied with.

b. Insufficient Workers--In the event that the Engineer, in his judgment, finds the condition whereby insufficient workers are present to accomplish the work and no corrective action is taken by the Contractor after being informed, the Engineer reserves the right to terminate the contract as provided for under Subsection 7.23. "TERMINATION OF CONTRACT."

c. Equipment Requirements--All equipment furnished by the Contractor and used on the work shall be of such size and of such mechanical condition that the work can be prosecuted in an acceptable manner at a satisfactory rate of progress and the quality of work produced will be satisfactory.

Equipment used on any portion of the project shall be such that no injury to the work, adjacent property or other objects will result from its use.

If the Contractor fails to provide adequate equipment for the work, the contract may be terminated as provided under Subsection 7.23 "TERMINATION"

In the event that the Contractor is paid for furnishing and operating equipment on a force-account basis, it shall be operated as directed by the Engineer in order to obtain maximum production under the prevailing conditions.

7.18 CONTRACT TIME--When the contract time is on a working day basis, the total contract time allowed for the performance of the work shall be the number of working days shown in the contract as awarded, plus any additional working days authorized in writing as provided hereinafter. A working day shall be as defined in Section 1 "DEFINITIONS". The count of elapsed working days to be charged against contract time, shall begin from the date of "Notice to Proceed" and shall continue consecutively to include the date of project acceptance as determined by the Engineer.

When the contract completion time is a fixed calendar date, it shall be the date on which all work on the project shall be substantially completed. Maintenance periods shall not be included as part of the contract time unless specifically noted in the contract documents.

Extensions of contract time shall be made as follows:

a. For increases in the scope for work caused by alterations and additional work made under Subsection 4.2 "CHANGES AND CLAIMS FOR ADJUSTMENT", the Contractor will be granted working day extension only if the changes are on the "critical path" and affect the final completion date of the Contract. If the Contractor feels that an extension of time is justified, he must request it in writing when the detailed cost breakdown required by Subsection 4.2 "CHANGES AND CLAIMS FOR ADJUSTMENT", is submitted. The Contractor must show how the final completion date will be affected based on the progress of the project and must also support his claim with schedules and statements from his subcontractors, suppliers, and/or manufacturers as to the extent of the delay.

b. For delays in obtaining the necessary building and/or grading permits which are beyond the control of the Contractor, the Contractor shall be granted one working day extension for each working day delay provided the Contractor notifies the Engineer immediately.

c. For delays caused by acts of God, or the public enemy, fire, unusually severe weather or adverse conditions resulting therefrom, floods, epidemics, quarantine restrictions, labor disputes, freight embargoes and other reasons beyond the Contractor's control, the Contractor may be granted an extension in working days provided that:

   1. The Contractor notifies the Engineer in writing within five (5) consecutive working days after the date of the occurrence of the circumstances described above and the possible effects such circumstances may have on the completion date of the contract.

   2. The Contractor further notifies the Engineer in writing at least five (5) consecutive working days before the circumstances described above will affect the critical operation(s) in progress.

   3. The Contractor submits to the Engineer within ten (10) consecutive working days after such

occurrence written statement as to the extent of delay to the progress of the project. The extent of delay must be substantiated as follow

(a) State specifically the reason or reasons for the delay. Also, explain as necessary, the effect of this delay to other trades and/or to the specified completion date of the project.

(b) List the pertinent chronological events for the project such as the following dates of:

(1) Notice to proceed

(2) Samples or shop drawing submittal

(3) Sample or shop drawing return

(4) Purchase order

(5) Delivery to job site

(6) Material installation

(7) Specified completion of project

(8) Actual completion of project

(9) Pertinent correspondence, telegrams, meetings and telephone conversations

(c) Submit copies of purchase order, delivery tag and any other pertinent correspondence as evidence to support claim.

(d) Cite the period of delay and the number of days requested therefore.

(e) A statement either that the above circumstances have been cleared and normal working conditions restored as of a certain day or that the above circumstances will continue to prevent completion of the project.

d. For delays caused by delays in delivery of materials and equipment which occurs as a result of unforeseeable causes beyond the control and without fault or negligence of both the Contractor and subcontractors or suppliers, the Contractor may be granted an extension of time in working days provided that he complies with

the procedures spelled out hereinbelow. No extension of time will be considered unless the material and equipment were ordered at the earliest possible date.

1. The Contractor must notify the Engineer in writing within five (5) consecutive working days after the date he first has any knowledge of delays or anticipated delays and the possible effects such delays may have on the completion date of the contract.

2. The Contractor must further notify the Engineer in writing at least five (5) consecutive working days before the delay will affect the critical operation(s) in progress.

3. The Contractor must submit to the Engineer within ten (10) consecutive working days after a firm delivery date for the material and equipment is established written statement as to the extent of delay to the progress of the project. The extent of delay must be substantiated as follows:

   (a) State specifically the reason or reasons for the delay. Also, explain as necessary, the effect of this delay to the other trades and/or to the specified completion date of the project.

   (b) List the pertinent chronological events for the project such as the following dates of:

      (1) Notice to proceed

      (2) Sample or shop drawing submittal

      (3) Sample or shop drawing return

      (4) Purchase order

      (5) Factory shipment

      (6) Arrival of ship

      (7) Delivery to job site

      (8) Material Installation

      (9) Specified completion of project

      (10) Actual completion of project

(11) Pertinent correspondence, telegrams, meetings and telephone conversations.

(c) Submit copies of purchase order, factory invoice bill of lading, shipping manifest, delivery tag and any other pertinent correspondence as evidence to support your claim.

(d) Cite the period of delay and the number of days requested therefore. The period of delay shall not exceed the difference between the originally scheduled delivery date at the job site versus the actual delivery date.

e. Working days elapsing during periods of suspension of the work by the Engineer shall be computed as follows:

When the performance of the work is totally suspended for one or more working days by order of the Engineer in accordance with Subsections 7.20.a., 7.20.c., 7.20.d. or 7.20e. the number of days from the effective date of the Engineer's order to suspend operations to the effective date of the Engineer's order to resume operations shall not be counted as working days. Days elapsing during any period of suspension in accordance with Subsection 7.20.b. shall be counted as working days. During periods of partial suspensions of the work, the Contractor will be granted working day extension only if the partial suspension affects the final completion date of the contract. If the Contractor feels that an extension of time is justified, he must request it in writing at least five (5) consecutive working days before the partial suspension will affect the critical operation(s) in progress. The Contractor must show how the final completion date will be affected based on the progress of the project and must also support his claim with statement from his subcontractors.

For extensions granted in accordance with Subsection 7.18.a., 7.18.c. and 7.18.d., the Engineer shall have the option of extending the contract time for only that portion of the work affected by the delay. If the Engineer exercises this option, the Contractor shall defer work in the areas approved by the Engineer and complete the remaining work within the time specified in the contract.

The Engineer shall evaluate all time extension requests and shall ascertain the facts and extent of the time involved and his findings of the facts thereon shall be final and conclusive.

No time extension will be considered for the following:

a. Delays or suspension of work due to the fault of the Contractor.

b. Delay in arrival of materials and equipment due to the fault of the subcontractor and/or supplier in ordering, fabricating, delivery, etc.

c. Delays caused by changes which the Engineer determines unjustifiable due to the lack of supporting evidence or because the change is of such nature that the final completion date will not be affected.

d. Delays caused by the failure of the Contractor to submit, on a timely basis, for approval by the Engineer, shop drawings, descriptive sheets, material samples, color samples, etc. except as covered in Subsection 7.18.c. and 7.18.d.

e. Failure to submit requests for clarification on a timely basis to avoid impacting the project schedule.

No extension of time exceeding 180 days will be granted unless specifically approved in writing by the Engineer.

7.19 STATEMENT OF WORKING DAYS--The Contractor will prepare the statement of the number of working days for each month together with the monthly estimate and promptly submit it to the Engineer for approval.

7.20 SUSPENSION OF WORK--The Engineer may, by written order, suspend the performance of the work, either in whole or in part for such periods as he may deem necessary for any cause, including but not limited to:

a. Weather or soil conditions considered unsuitable for prosecution of the work, or

b. Failure on the part of the Contractor to:

1. Correct conditions unsafe for the general public or for the workers.

2. Carry out orders given by the Engineer, or

3. Perform the work in strict compliance with the provisions of the contract.

4. **Provide Superintendent on the jobsite as described under paragraph 5.5.c.**

c. Unforeseen soil conditions where a redesign of foundation is necessary or when any other redesign for any reason is deemed necessary by the Engineer.

d. Disturbance due to noise or dust arising from the construction even if such disturbance does not violate the section on Environmental Protection contained in the specifications.

e. *The convenience of the State.*

Suspension of work on some but not all items of work shall be considered a "partial suspension". Suspension of work on all items shall be considered "total suspension". The period of suspension shall be computed from the date set out in the written order for work to cease until the date of the order for work to resume.

Any adjustment of contract time for suspension of work shall be made as provided in Subsection 7.18 **"CONTRACT TIME"**.

In the event that the Contractor is ordered by the Engineer in writing as provided herein to suspend all work under the contract in accordance with Subsection 7.20.c, 7.20.d or *7.20.e*, the Contractor may be reimbursed for actual money expended towards the project during the period of suspension. No allowance will be made for anticipated profits.

If the performance of all or part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the Engineer in the administration of this contract, or by the failure of the Engineer to act within the time specified in this contract (or if no time is specified, within reasonable time), an adjustment shall be made for any increase in the cost of performance of this contract necessarily caused by such unreasonable suspension, delay or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption:

a. To the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the contractor; or

b. For which an adjustment is provided for or excluded under any other provision of this contract.

No claim under this clause shall be allowed:

a. *For any costs incurred more than twenty (20) days before the contractor shall have notified the Engineer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and*

b. *Unless the claim is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the contract.*

Any adjustment in contract price made pursuant to this clause shall be determined in accordance with Subsection 4.2.

Claims for such compensation shall be filed with the Engineer within *thirty (30) calendar* days after the date of the order to resume work or such claims will not be considered. Together with the claim, the Contractor shall submit substantiating documents covering the entire amount shown on the claim. The Engineer shall take the claim under consideration and may make such investigations as are deemed necessary and shall be the sole judge as to the equitability of such claim and his decision shall be final.

No provision of this article shall be construed as entitling the Contractor to compensation for delays due to failure of surety, for suspensions made at the request of the Contractor, for any delay required under the contract, for partial suspension of work or for suspensions made by the Engineer under the provisions of Subsection 7.20.b.

7.21 DISPUTES *AND CLAIMS--The Contractor may give notice in writing to the Engineer for claims* that extra compensation, *damages, or an extension of time for completion* is due him *for one or more of the following reasons:*

a. *Requirements not clearly covered in the contract, or not ordered by the Engineer as an extra;*

b. *Failure between the State and the Contractor to agree to an adjustment in price for a change order issued by the State; or*

c. *An action or omission on the part of the Engineer requiring performance changes within the scope of the contract.*

The Contractor shall continue with performance of the contract in compliance with the directions or orders of the Engineer, but by so doing, the contractor shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

a. The notice in writing be given:

1. Prior to the commencement of the work involved, if at that time the Contractor knows of such requirements or the occurrence of such actions or omissions; or

2. Within thirty (30) calendar days after the Contractor knows of such requirements or the occurrence of such action or omission if the Contractor did not have such knowledge prior to the commencement of the work; or

3. Within thirty (30) calendar days after receipt of the written change order that was not agreed upon by both parties; or

4. Within such further time as may be allowed by the Engineer in writing.

b. The notice shall clearly state the Contractor's intention to make claim and the reasons why the Contractor believes that additional compensation, changes or an extension of time may be remedies to which he is entitled; and afford the Engineer every facility for keeping records of the actual cost of work. Failure on the part of the Contractor to give such notification or to afford the Engineer proper facilities for keeping strict account of actual cost shall constitute waiver of the claim for such extra compensation. The filing of such notice by the Contractor and the keeping of costs by the Engineer shall not in any way be construed to prove the validity of the claim.

The Engineer will review the *notice* and render his decision. His decision shall be final and conclusive unless, within thirty (30) calendar days from the date of the decision, the Contractor mails or otherwise furnishes a written appeal to the Engineer. The decision of the Engineer shall be final. *Later notification of such claims shall not bar the contractor's claim unless the State is prejudiced by the delay in notification. No claim by the contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this contract. Any adjustment in the contract price made pursuant to this clause*

shall be determined in accordance with Subsection 4.2 "CHANGES AND CLAIMS FOR ADJUSTMENT".

Nothing herein contained, however, shall excuse the Contractor from compliance with any rules of law precluding any state officers and any contractors from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the contract.

7.22 FAILURE TO COMPLETE THE WORK ON TIME--It is mutually agreed by and between the parties hereto that time shall be an essential part of this contract and that in case of the failure on the part of the Contractor to complete his contract within the time specified and agreed upon, the State of Hawaii will be damaged thereby; and the amount of said damages shall be the appropriate sum set forth in the Bid Proposal for each and every calendar day which the Contractor has delayed in completing the contract, and the Contractor hereby agrees that said sum shall be paid as liquidated damages and not by way of penalty, and in case the same are not paid they shall be deducted from monies due or that may become due to the Contractor under the contract.

The findings of the Engineer shall be accepted by the parties hereto as final, but any allowance of time and remission of charges shall in no other manner affect the rights or obligations of the parties under this contract, nor be construed to prevent action under Subsection 7.23 "TERMINATION OF CONTRACT" in case the Contractor shall fail in the judgment of the Engineer to make reasonable and satisfactory progress after such allowance of time has been granted.

a. *Liquidated damages upon termination: If the State so terminates the Contractor's right to proceed, the resulting damage will consist of such liquidated damages for such reasonable time as may be required for final completion of work.*

b. *Liquidated damages in the absence of termination: If the State does not terminate the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed or accepted.*

7.23 TERMINATION OF CONTRACT

a. *By Default*--The Engineer may declare the Contractor in breach and may terminate the contract for any of the following reasons:

1. There is substantial evidence that the progress being made by the Contractor is insufficient to

complete the work within the specified contract time;

2. The Contractor fails to observe any requirement of the contract;

3. The Contractor fails to start the work within ten (10) consecutive working days after the date specified in the notice to proceed;

4. After having been directed in writing by the Engineer, the Contractor fails to promptly correct any defects;

5. There is substantial evidence of collusion for the purpose of illegally procuring a contract or perpetuating fraud on the State in the construction or work under contract;

6. The Contractor discontinues the prosecution of the work;

7. The Contractor performs the work unsuitably or neglects or refuses to remove materials or to perform anew such work as may be rejected as unacceptable and unsuitable;

8. The Contractor becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency;

9. The Contractor allows any final judgment to stand against him unsatisfied for a period of ten (10) days;

10. The Contractor makes an assignment for the benefit of creditors; or

11. When in the opinion of the Engineer, the Contractor makes changes in his list of subcontractors submitted in his proposal, which are unjustified and substantive. No subcontractor may be added or deleted and substitutions will be allowed only if the subcontractor listed in the Contractor's original bid:

    (a) Fails, refuses or is unable to enter into a subcontract;

    (b) Becomes insolvent;

(c) Cannot furnish a reasonable performance bond;

(d) Has his subcontractor's license suspended or revoked;

(e) Is unable to comply with other requirements of law applicable to contractors, subcontractors and public works projects.

12. The Contractor fails to complete punch list items and submit the required closing documents within the time specified.

Before the contract is terminated, the Engineer will give notice in writing to the Contractor and his surety of the conditions which make termination of the contract imminent. If the Contractor or surety, within a period of ***fourteen (14) calendar*** days after such notice, does not proceed in accordance therewith, then the Board will, upon the written notification from the Engineer of the Contractor's failure to comply with the prior notice, have full power and authority without violating the contract, to terminate the contract and take the prosecution of the work out of the hands of the Contractor.

Upon receipt of a notice from the Engineer that the contract has been terminated, the Contractor shall immediately discontinue all operations. The Department may appropriate or use any or all materials and equipment on the ground to be incorporated in the work as may be suitable and acceptable and may enter into an agreement for the completion of said contract according to the terms and provisions thereof, or use such other methods as in the opinion of the Engineer will be required for the completion of said Contract in an acceptable manner.

All costs and charges incurred by the Department, together with the cost of completing the work under contract, will be deducted from any monies due or which would or might have become due to the Contractor had he been allowed to complete the work under the contract. If such expense exceeds the sum which would have been payable under the contract, then the Contractor and the surety shall be liable and shall pay the Department the amount of the excess.

In case of termination, the Engineer shall limit payment to the Contractor to the part of the contract satisfactorily completed at the time of termination. Payment will not be made until the tax clearance required by Subsection 8.7 **"FINAL PAYMENT"** is submitted by the Contractor. Termination shall not relieve the Contractor or Surety from liability for liquidated damages theretofore incurred.

If the Engineer finds that any laborer or mechanic employed on the job site by the Contractor or any subcontractor has been or is being paid wages at a rate less than the required rate by the specifications, or has not received his full overtime compensation, the Engineer may by written notice to the Contractor terminate his right or the right of any subcontractor to proceed with the work or with the part of the work in which the required wages or overtime compensation have not been paid and may complete such work or part by contract or otherwise; and the Contractor and his sureties shall be liable to the State for any excess costs occasioned thereby.

b. *Erroneous Termination for Default--If after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause. If in the foregoing circumstances, this contract does not contain a clause providing for termination for the convenience of the State, the contract shall be adjusted to compensate for such termination and the contract modified accordingly.*

c. *Additional Rights and Remedies--The rights and remedies of the State provided in this clause are in addition to any other rights and remedies provided by law or under this contract.*

d. *State's Convenience*

1. *Terminations--The State may, when in the interest of this State so require, terminate this contract in whole or in part, for the convenience of the State. The State shall give written notice of the termination to the Contractor specifying the part of the contract terminated and when termination becomes effective.*

2. *Contractor's Obligations--The Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The*

Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Comptroller may direct the Contractor to assign the Contractor's rights, title, and interest under terminated orders or subcontracts to the State. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as necessary to do the work.

3. *Right to Construction and Goods--The Engineer may require the Contractor to transfer title and deliver to the State in the manner and to the extent directed by the Engineer:*

   (a) *Any completed constructions; and*

   (b) *The partially completed construction, goods, materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "construction material") as the Contractor has specifically produced or specially acquired for the performance of the terminated part of this contract.*

   The Contractor shall protect and preserve property in the possession of the contractor in which the State has an interest. If the Engineer does not exercise this right, the Contractor shall use best efforts to sell such construction, goods, and construction materials in accordance with the standards of section 490:2-706, HRS. This in no way implies that the State has breached the contract by exercise of the termination for convenience clause.

4. *Compensation*

   (a) *The Contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data, submitted to the extent required by subchapter 15, chapter 3-122, HAR, bearing on such claim. If the Contractor fails to file a termination claim within one year from the effective date of termination, the Engineer, may pay the Contractor, if at all, an amount set in accordance with paragraph 7.23.d.4 (c)(2).*

(b) *The Engineer and the Contractor may agree to a settlement provided the Contractor has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the State, the proceeds of any sales of construction, supplies, and construction materials under paragraph 7.23.d.4 (c)(3) of this clause, and the contract price of the work not terminated.*

(c) *Absent complete agreement under paragraph 7.23.d.4(b) of this paragraph, the Comptroller shall pay the Contractor the following amounts, provided payments under paragraph 7.23.d.4(b) shall not duplicate payments under this paragraph the total (without duplication of any items) of:*

(1) *The cost of all contract work performed prior to the effective date of the notice of termination work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for completed portions of such work; provided, however, that if it appears that the Contractor would have sustained a loss if the entire contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;*

(2) *Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to paragraph 7.23 d.2. of this clause. These costs must not include costs paid in accordance with subparagraph 7.23.d.4(c)(1) of this paragraph;*

(3) *The reasonable settlement costs of the Contractor, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination*

and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this contract; and

(4) The total sum to be paid the Contractor under this paragraph shall not exceed the total contract price plus the reasonable settlement costs of the Contractor reduced by the amount of any sales of construction supplies, and construction materials under paragraph 7.23.d.3 of this clause, and the contract price of work not terminated.

(d) Cost claimed, agreed to, or established under paragraph 7.23.d.4 (b) and (c) of this paragraph shall be in accordance with chapter 3-123, HAR.

7.24 CORRECTING DEFECTS--If the Contractor fails to commence to make good any defects of any nature, within ten (10) working days after the correction thereof has been requested in writing by the State, and thereafter to expeditiously complete the correction of said defects, the Engineer may without further notice and without termination of contract, correct the defects and deduct the cost thereof from the contract price.

7.25 FINAL CLEANING UP--Before final inspection of the work, the Contractor shall clean all ground occupied by the Contractor in connection with the work of all rubbish, excess materials, temporary structures and equipment, and all parts of the work must be left in a neat and presentable condition to the satisfaction of the Engineer. However, the Contractor shall not remove any warning and directional signs prior to the formal acceptance by the Engineer. Full compensation for final cleaning up will be considered as included in the prices paid for the various items of work or lump sum bid, as the case may be, and no separate payment will be made therefor.

7.26 FINAL INSPECTION--Before notifying the Engineer that the project is substantially completed, the General Contractor shall

inspect the project and test all equipment with all of his subcontractors. The General Contractor shall also proceed to obtain the following documents:

a. All written guarantees required by the contract.

b. All required "As-Built" drawings.

c. Complete weekly payrolls for both the General and Subcontractors.

d. Certificate of Plumbing and Electrical Inspection.

e. Certificate of building occupancy as required.

f. Certificate of Soil and Wood Treatments.

g. Certificate of Water System Chlorination.

h. Certificate of Elevator Inspection, Boiler and Pressure Pipe Inspection.

i. Maintenance Service Contract and two (2) copies of a list of all equipment installed.

j. All Operating and Maintenance Manuals for installed equipment.

Substantially Complete means:

a. All utilities are connected and in working condition.

b. All air conditioning and other major equipment are in acceptable working condition.

c. No Punch List items (list of deficiencies which must be corrected before final acceptance of contract) exist which will disrupt the use of the facility or room.

d. The building, structure or improvement can be used for its intended purpose.

After finding everything in order, the General Contractor will notify the State in writing that the project is substantially completed and ready for final inspection. He shall also submit with his notification all operating and maintenance manuals for all installed equipment.

The State Inspector shall then make a preliminary determination as to whether or not the project is substantially complete and ready for final inspection.

If the project is not substantially complete, the State Inspector will inform the Contractor in writing as to specific deficiencies which must be corrected before the project will be considered substantially complete. The General Contractor shall take immediate action to correct the deficiencies and must repeat all steps described above including written notification for final inspection.

After the State Inspector determines that the project is substantially complete the final inspection shall be scheduled within ten (10) working days after receipt of the Contractor's latest letter of notification that the project is ready for final inspection.

7.27 PROJECT ACCEPTANCE DATE--If upon final inspection the Engineer finds that the project has been satisfactorily completed in compliance with the contract, he may declare the project as being completed and accepted and will notify the Contractor in writing of the acceptance.

After the Contractor receives notification that the Engineer has set the Project Acceptance Date, the Contractor shall be maintaining and protecting the work and he shall also be relieved of his responsibility for injury to persons/property or damages to work EXCEPT that this does not hold true while Contractor is completing deficiencies on the Punch List.

The date of Acceptance shall determine:

a. End of Contract time.

b. Commencement of all guarantee period except as noted in 7.31a.

c. Commencement of all maintenance services except as noted in 7.31b.

In addition to notifying the Contractor of the Project Acceptance Date, the Engineer will also notify him in writing of any deficiencies which must be corrected before final settlement is made.

The Contractor must start work on correcting the deficiencies noted at final inspection within five (5) consecutive working days after receipt of the letter and complete all work within the time indicated in the Letter of Acceptance.

If the Contractor does not respond within five (5) consecutive working days or fails to complete the work within the time specified the State shall have the right to correct the

deficiencies by whatever method it deems necessary and deduct the cost from the final payment due the Contractor.

If upon final inspection the Engineer does not find the project substantially complete, the Contractor shall immediately correct the faults found and he shall again repeat the steps described herein before including written notification for final inspection.

7.28 FINAL SETTLEMENT OF CONTRACT--The contract will be considered settled when all work has been fully completed including the "Punch List" items and the following submitted:

a. All written guarantees required by the contract.

b. All required "As-Built" drawings.

c. Complete weekly payrolls for both the General and Subcontractors.

d. Certificate of Plumbing and Electrical Inspection.

e. Certificate of building occupancy as required.

f. Certificate of Soil and Wood Treatments.

g. Certificate of Water System Chlorination.

h. Certificate of Elevator Inspection, Boiler and Pressure Pipe installation.

i. Maintenance Service Contract and two (2) copies of a list of all equipment installed.

j. All other contract documents required by the Contract.

7.29 CONTRACTOR'S RESPONSIBILITY FOR WORK--Until acceptance by the Engineer of any part or all of the construction as provided for in these specifications, it shall be under the charge and care of the Contractor, and he shall take every necessary precaution against injury or damage to any part of the work by the action of the elements or from any other cause whatsoever, whether arising from the execution or from the non-execution of the work. The Contractor shall rebuild, repair, restore and make good all injuries or damage to any portion of the work occasioned by any of the above causes before final acceptance and shall bear the expense thereof.

7.30 PERSONAL LIABILITY OF PUBLIC OFFICIALS--In carrying out any of the above provisions or in exercising any power or authority granted to him by this contract, there shall be no liability upon said Engineer or his authorized assistants either personally or as an official of the State, it being understood that in such matters, he acts as the agent and representative of the State.

7.31 GUARANTEE OF WORK

a. Except as otherwise specified, all work shall be guaranteed by the Contractor against defects resulting from the use of defective or inferior materials, equipment or workmanship for one year or as otherwise noted in the technical specifications from the date of beneficial occupancy or project acceptance of the contract whichever is earlier. All guarantee of work shall be transmitted in writing.

b. Should date of beneficial occupancy be earlier than project acceptance date, the maintenance service contracts and warranty date for equipment in use shall start from the date of beneficial occupancy.

c. If, within any guarantee period, repairs or changes are required in connection with the guaranteed work, which in the opinion of the Engineer is rendered necessary as a result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the contract, the Contractor shall within five (5) consecutive working days and without expense to the State commence to:

   1. Place in satisfactory condition in every instance all of such guaranteed work and correct all defects therein; and

   2. Make good all damages to the building or work or equipment or contents thereof.

d. Whenever a manufacturer's guarantee on any product hereinafter specified exceeds one year, this guarantee shall become part of this contract thereof. The Contractor shall complete the warranty forms in the name of the State and submit such forms to the manufacturer within such time required to validate the warranty. The Contractor shall submit to the State a photocopy of the completed warranty form for the owner's record as evidence that such warranty form was filed with the manufacturer.

e. **If guarantee is specified for greater than two (2) years, two (2) years shall prevail except for manufacturer's warranties. Manufacturer's warranties shall remain as specified in their respective sections.**

However, the number of years specified in the technical specifications shall prevail only if it is stated that the number of years for guarantee supersedes this provision.

7.32 CLOSING CONTRACTS--In order to close a contract, the Contractor shall submit the final estimate and the applicable closing documents by the specified time. In the event that the Contractor should fail to comply with this request, the Engineer or his duly authorized representative may terminate the Contract. The pertinent provisions of Subsection 7.23 **"TERMINATION OF CONTRACT"** shall be applicable.

7.33 TERMINATION FOR CONVENIENCE OF THE STATE--The State, through the Engineer, may terminate this contract, in whole or in part, for its convenience at any time by giving the Contractor ten (10) days written notice of its intent. In such event, the Contractor shall be reimbursed for the actual cost expended in the performance of this contract, prior to the date of termination, as determined by the Engineer; the intent being that an equitable settlement shall be made with the Contractor. No claim for loss of anticipated profits shall be permitted.

7.34 SERVICE CHARGE FOR PERMANENT UTILITY SERVICE--The Contractor shall be responsible for scheduling and coordinating the work with the utility companies and applicable governmental agencies for permanent service connection. The State will pay the utility companies and applicable governmental agencies directly for such connections upon receipt of the statement of charges. Additional charges for overhead, supervision, coordination, profit, insurance and any other incidental expenses shall not be considered as reimbursable but shall be included in his Lump Sum Bid.

7.35 RIGHT TO AUDIT RECORDS

Pursuant to Section 103D-317 HRS the State, at reasonable times and places, may audit the books and records relating to the contractor's cost or pricing data. The books and records shall be

maintained for a period of three years from the date of final payment under the contract, unless another period is otherwise authorized in writing.

SECTION 8--MEASUREMENT AND PAYMENT

8.1 MEASUREMENT OF QUANTITIES--All work completed under the contract shall be measured by the Engineer according to United States standard measures, unless otherwise agreed upon in writing. The method of measurement and computations to be used in determination of quantities of material furnished and of work performed under the contract will be those methods generally recognized as conforming to good engineering practice. These measurements shall be considered correct and final unless the Contractor has protested same to the Engineer and has demonstrated the existence of an error by actual measurement on the ground before the work has progressed in a manner which would prohibit a proper check.

All measurements of the area of the various surface, pavement and base courses will be made in the horizontal projection of the actual surface and no deductions will be made for fixtures having and area of nine (9) square feet or less. All measurements of headers, curbs, fences and any other type of construction which is to be paid for by its length, will be made in the horizontal projection of the actual length, except where slope exceeds **ten percent** 10% and for piles, which will be by actual length. All materials which are specified for measurement by the cubic yard "Loose Measurement" or "Measured in the Vehicle" shall be hauled in approved vehicles and measured therein at the point of delivery on the road. Approved vehicles for this purpose may be of any type or size satisfactory to the Engineer, provided that the body is of such type that the actual contents may be readily and accurately determined. Unless, all approved vehicles on a job are of a uniform capacity, each approved vehicle must bear a plainly legible identification mark indicating the specific approve capacity. The Inspector may reject all loads not hauled in such approved vehicles.

8.2 NO WAIVER OF LEGAL RIGHTS--The Engineer shall not be precluded or estopped by any measurements, estimate or certificate made either before or after the completion and acceptance of the work and payment therefor, from showing the true amount and character of the work performed and materials

furnished by the Contractor, or from showing that any such measurement, estimate or certificate is untrue or incorrectly made, or that the work or materials do not conform in fact to the contract. The Engineer shall not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate and payment in accordance therewith, from recovering from the Contractor and his sureties such damages as the State may sustain by reason of the Contractor's failure to comply with the terms of the contract. Neither the acceptance by the Engineer or any representative of the Engineer, nor any payment for or acceptance of the whole or any part of the work, nor any extension of time, nor any possession taken by the Engineer, shall operate as a waiver of any portion of the contract, or of any power herein reserved, or any right to damage herein provided. A waiver of any breach of the contract shall not be held to be a waiver of any other or subsequent breach.

8.3 PAYMENT AND COMPENSATION FOR ALTERED QUANTITIES--When alternations in plans or quantities of work as hereinabove provided for are ordered and performed, and when such alternations result in an increase or decrease of the quantity or work to be performed, the Contractor shall accept as payment in full, so far as contract items are concerned, payment at the original contract unit prices for the actual quantities of work done. No allowance will be made for any increased expense, loss of expected reimbursement, or loss of anticipated profits, except as provided under Subsection 4.2 "CHANGES AND CLAIMS FOR ADJUSTMENT".

8.4 PAYMENT FOR ADDITIONAL WORK--Additional work as defined in Subsection 4.2a., when ordered, shall be paid for under an approved change order in accordance with the terms provided herein.

a. Negotiated Work--In accordance with Subsection 4.2a "PRICE ADJUSTMENT":

1. Whenever it is deemed by the Engineer to be in the best interest of the State, all or any part of such negotiated work may be pursued on a cost-plus basis computed as provided under Subsection 8.4b "FORCE ACCOUNT" plus adjustment made under the following conditions:

(a) Prime Contractor may add an additional five percent (5%) when a subcontractor performs the work for a prime contractor or

when equipment not owned by the prime contractor is used on a rental basis.

(b) Not more than thirty percent (30%) will be allowed regardless of the number of tiers of subcontractors for each item of work.

2. On proposals covering both increases and decreases, the application of overhead and profit shall be on the net change in direct costs for the performance of the work.

3. When payment is to be made for additional work directed by an approved change order, the total price for the work contained in the change order shall be considered full compensation for materials, labor, insurance, taxes, equipment rental and supervision.

b. Force Account Work--Where payment is to be made on force-account basis, all work performed or labor and materials and equipment furnished shall be paid for as follows:

1. Labor--For all labor of workers (including other personnel when authorized by the Engineer), the Contractor will receive the rate of wage including fringe benefits when such amounts are required by collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the work, which shall be agreed upon in writing before beginning work for each and every hour that said labor is actually engaged in said work.

   An amount equal to fifteen percent (15%) of the actual labor cost to cover the Contractor's and subcontractor's operating expense, overhead and profit will be paid the Contractor.

   No allowance for overtime compensation will be given without the written approval of the Engineer prior to performance of such work.

2. Insurance and Tax--The Contractor will also receive the actual costs paid for property damage, liability, workers compensation insurance premiums, State unemployment contributions, Federal unemployment taxes and social security taxes to which six percent (6%) shall be added.

3. Materials--For materials accepted by the Engineer and used, the Contractor shall receive the actual cost of such materials delivered and incorporated into work, including transportation charges paid by him, to which ten percent (10%) will be added.

4. Equipment

(a) For any machinery or special equipment (other than small tools as herein defined in paragraph f), the use of which has been authorized by the Engineer, the Contractor will be paid at the per-hour rental rates based on the monthly rate established for said machinery or equipment in the then-current edition of the Rental Rate Blue Book for Construction Equipment including the estimated operating cost per hour, and regional correction provided therein.

If no rate is listed for a particular kind, type or size of machinery or equipment, then the monthly, hourly rates shall be as agreed upon in writing by the Contractor and the Engineer prior to the use of said machinery or equipment.

(b) Rental rates which are higher than those specified in the aforesaid Rental Rate Blue Book publication may be allowed where such higher rates can be justified by job conditions such as work in water and work on lava, etc. Request for such higher rates shall be submitted in writing to the Engineer for approval prior to the use of the machinery or equipment in question.

(c) The rental rate for trucks not owned by the Contractor shall be those as established under the Hawaii State Public Utilities Commission, which will be paid for as a material item pursuant to Subsection 8.4b 3.

Rental rates for Contractor-owned trucks not listed in the Rental Rate Blue Book shall be agreed upon in writing by the Contractor and Engineer prior to the use of said trucks.

(d) All rental rates for machinery and equipment shall include the cost of fuel, oil, lubricants, supplies, small tools, necessary

attachments, repairs, maintenance, tire wear, depreciation, storage, and all other incidentals.

(e) All machinery and equipment shall be in good working condition and suitable for the purpose for which the machinery and equipment is to be used.

(f) Individual pieces of equipment or tools having a replacement value of $250.00 or less, whether or not consumed by use, shall be considered to be small tools and no payment will be made therefor.

(g) The following provisions shall govern in determining the compensation to be paid to the Contractor for use of equipment or machinery on a force account basis:

(1) Transportation and/or Mobilization

(a) The location from which the equipment is to be moved or transported shall be approved by the Engineer.

(b) Where the equipment must be transported to the site of the force account work, the Department will pay all cost of mobilizing and transporting the equipment, including its loading and unloading, from its original location to the site of force account work. Upon completion of the work the Department will pay the cost of mobilizing and transporting the equipment back to its original location or to another location, whichever cost is less.

The cost of transporting the equipment shall not exceed the rates established by the Hawaii State Public Utilities Commission. If such rates are nonexistent, then the rates will be determined by the Engineer based upon the prevailing rates charged by established haulers within the locale.

(c) Where the equipment is self-propelled, the Department will pay the cost of moving the equipment by its own power from its original location to the site of the force account work. Upon completion of the work the Department will pay the cost of moving of the Equipment back to its original location, whichever cost is less.

(d) Payment for mobilizing and transportation above provided, will not be made if the equipment is used on the work in any other way than upon extra work paid for on a force account basis.

(2) Rental

(a) The rental period shall begin at the time equipment reaches the site of work, shall include each day that the machinery or equipment is at the site of the work and shall terminate at the end of the day on which the Engineer directs the Contractor to discontinue the use of machinery or equipment. In the event the equipment must standby due to work being delayed or halted by reason of design, traffic, or other related problems uncontrollable by the Contractor, but excluding Saturdays, Sundays and Legal Holidays, unless the equipment is used to perform work on such days, the rental shall continue as set forth herein until the Engineer orders the equipment removed from the site.

(b) The rental time to be paid will be in accordance with the following schedule:

Hours Equipment Is In Operation	Hours To Be Paid
0	4
0.5	4.25
1	4.5
1.5	4.75
2	5
2.5	5.25
3	5.5
3.5	5.75
4	6
4.5	6.25
5	6.5
5.5	6.75
6	7
6.5	7.25
7	7.5
7.5	7.75

*Over 8 hours in operation

*Any hours or operation in excess of 8 in any one day must be approved by the Engineer prior to the performance of such work.

(c) For purposes of determining the proper half-hour increment under the Hours Equipment Is In Operation column of the above schedule, less than 30 minutes of operation shall be considered to be half an hour of operation.

(d) Rental time will not be allowed or credited for any day on which machinery or equipment is inoperative due to its breakdown. On such days, the Contractor will be paid only for the actual hours, if any, that the machinery or equipment was in operation.

(e) In the event the force account work is completed in less than 8 hours, equipment rental shall never the less be paid for a minimum 8 hours.

(f) For the purpose of determining the rental period the continuous and consecutive days shall be the normal 8-hour shift work day, Monday through Friday excluding

legal holidays. Any work day to be paid less than 8 hours shall not be considered as continuous, except for equipment removed from rental for fuel and lubrication.

(g) Overtime shall be paid for each hour in excess of the normal 8-hour shift work day at the corresponding hourly rate for daily, weekly and monthly rates.

5. State Excise (Gross Income) Tax--A sum equal to the current percentage rate for the State excise (Gross Income) tax on the total sum determined in 1, 2, 3, and 4, above shall be added as compensation to the Contractor.

The compensation as determined in 1, 2, 3, 4, and 5 above shall be deemed to be payment in full for work done on a force account basis, including superintendence, overhead, use of tools and equipment for which no rental is allowed, profit, all taxes, subcontracting and other costs in connection therewith which are not provided for herein.

6. Records--The Contractor and the Engineer shall compare records of the cost of work done as ordered on a force account basis at the end of each day. These daily records shall thereafter be deemed to be the basis for payment of force account work.

7. Statements--No payment will be made for work performed on a force account basis until the Contractor has submitted to the Engineer duplicate, itemized statements of the cost of such force account work detailed as follows:

(a) Laborers--Name, classification, date, daily hours, total hours, rate, and extension for each laborer and foreman and also the amount of fringe benefits payable if any.

(b) Equipment--Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.

(c) Materials

(1) Quantities of materials, prices and extensions.

(2) Costs of transporting materials, if such cost is not reflected in the prices of the materials.

(3) Statements shall be accompanied and supported by receipted invoices for all materials used and transportation charges. However, if materials used on the force account work are not specifically purchased for such work but are taken from the Contractor's stock, then in lieu of the invoices the Contractors shall submit an affidavit certifying that such materials were taken from his stock and that the amount claimed represents the actual cost to the Contractor.

(d) Insurance--Cost of property damage, liability and workers' compensation insurance premiums, unemployment insurance contributions, and social security tax.

8.5 PROGRESS AND/OR PARTIAL PAYMENTS--*The Contractor will be allowed progress payments on a monthly basis upon preparing the Monthly Estimate forms and submitting them to the Engineer. The estimate shall be based on the items of work satisfactorily completed and the value thereof at unit prices and/or lump sum prices set forth in the contract and will be subject to compliance with Section 7.7 "PAYROLL AND PAYROLL RECORDS".*

In the event the Contractor or any Subcontractor fails to submit certified copies of payrolls in accordance with the requirements of Section 7.7 "PAYROLL AND PAYROLL RECORDS", the Engineer may deduct the amount due for items of work for which payroll affidavits have not been submitted on a timely basis notwithstanding satisfactory completion of the work. The contractor shall not be due any interest payment for an amount thus withheld.

The Contractor will also be allowed partial payments to the extent of sixty percent (60%) of the invoice cost of approved materials to be incorporated in the work on the following conditions:

a. The materials are delivered and properly stored at the site of work, or

b. The materials are delivered to the Contractor or subcontractors and properly stored in acceptable storage places within reasonable distance of the site of work for special items of materials approved by the Engineer.

Partial payments shall be made only if the Engineer finds that:

a. *The contractor has submitted bills of sale for the materials or otherwise demonstrates clear title to such materials.*

b. *The materials are adequately insured against theft, fire, damages incurred in transportation to the site, and other casualties.*

c. *The materials are not subject to deterioration.*

d. *In the case of materials stored off the project site, the materials are not commingled with other materials not to be incorporated into the project.*

The State will retain five percent (5%) of the total amount of progress and/or partial payment until after completion of the entire contract in an acceptable manner and the balance, less previous payments, will be certified and paid to the Contractor, provided further, that after fifty percent (50%) of the contract is completed and progress is satisfactory, no additional sum shall be withheld; provided further, that if progress is not satisfactory, the State may continue to withhold as retainage sums not exceeding five percent (5%) of the amount due the Contractor. The State may enter into an agreement with the Contractor which will allow the Contractor to withdraw from time to time the whole or any portion of the sum retained upon depositing with the State any general obligation bond of the State or its political subdivisions with a market value not less than the sum to be withdrawn, provided that the State may require that the total market value of such bond be greater than the sum to be withdrawn.

The Contractor warrants and guarantees that all work and materials covered by progress or partial payments made thereon shall be free and clear of all liens, claims, security interests or encumbrances, and shall become the sole property of the State. This provision shall not, however, be construed as an acceptance of the work nor shall it be construed as relieving the Contractor from the sole responsibility for all materials and work upon which payments have been made or the restoration of any damaged work, or as waiving the right of the State to require the fulfillment of all the items of the contract.

8.6 DEDUCTION FROM PAYMENT--The Department may at any time retain or deduct out of any sums due the Contractor, claims of the State to cover any unpaid claims of others supported by sworn statements filed in the Office of the Manager-Chief Engineer,

without any liability for damages, interest or otherwise to the Contractor for such retention or deduction.

8.7 FINAL PAYMENT--When the work provided for by the contract has been completely performed on the part of the Contractor, all parts of the work have been approved by the Engineer, and the final inspection and project acceptance as provided for have been made, the Contractor will prepare and submit to the Engineer the final payment request. The final payment amount, less all previous payments and less any sums that may have been deducted in accordance with the provisions of the contract, will be paid to the Contractor, provided the Contractor has submitted the following:

a. Tax Clearance from the Department of Taxation to the affect that all delinquent taxes levied or accrued under State Statutes against the contractor have been paid.

   1. Clearance Certificate (Income Assessment and Audit Division)

   2. Division of Taxation certificate

b. The Contractor shall execute and file with the Department of Land and Natural Resources the Contractor's Release Affidavit forms before final payment is made. The blank forms as shown herein may be copied or obtained at the Division of Water and Land Development, Department of Land and Natural Resources, Kalanimoku Building, Room 227, 1151 Punchbowl Street, Honolulu, Hawaii.

c. Satisfactory evidence by affidavit that all debts resulting from the contract have been fully paid.

Sums necessary to meet the claims of the State or any other person, partnership, corporation or other legal entity may be retained from the sums due the Contractor until said claims have been fully and completely discharged or otherwise satisfied.

The filing of willfully false affidavits will disqualify the Contractor from bidding on future work of the Department.

8.8 PROMPT PAYMENT:

a. *In accordance with Section 103-10.5, HRS, any money, other than retainage, paid to a Contractor shall be dispersed to Subcontractors within ten (10) consecutive calendar days after receipt of the money in accordance with the terms of the Subcontract, provided that the Subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes, and*

b. *Upon final payment to the Contractor, full payment to the Subcontractor, including retainage, shall be made within ten (10) consecutive calendar days after receipt of the money, provided there are no bona fide disputes over the Subcontractor's performance under the subcontract.*

1. *<u>Definition</u>*

a. *Subcontract--Any written agreement between the Contractor and his Subcontractors which contains the conditions under which the Subcontractor is to perform a portion of the work for the Contractor.*

b. *Bona Fide Disputes--The following are examples of 'bona fide disputes':*

(1) *When a Subcontractor delays the project to the extent that liquidated damages may be imposed on the Contractor and the Subcontractor fails to provide a Contractor with written justification for such delay;*

(2) *When work done by a Subcontractor is paid for and later found to be non-conforming or unacceptable and the amount previously paid by the State is deducted from subsequent payment request;*

(3) *When the Subcontractor fails to promptly correct any and all deficiencies and/or non-conforming work cited by the State; or*

(4) *When the Subcontractor fails to fulfill any term, condition or requirement of his subcontract.*

2. *Filing of Complaint and Verification of its Validity:*

Complaints by Subcontractors of late or non-payment must be submitted in writing to the Engineer stating (1) the amount past due for work performed and already paid for by the State, (2) that all the terms, conditions or requirements of his subcontract have been met and (3) that no bona fide dispute over his performance exists. The Engineer will hear and receive evidence to determine the validity of the complaint and his decision on the matter shall be final.

3. *Follow-Up Action:*

If the Engineer or his representative determines that the Contractor failed to make payment required under the subcontract to a Subcontractor with whom he has no 'bona fide dispute' within the time period specified above, he shall inform the Contractor of his findings and request the Contractor make payment accordingly. If the Contractor does not act promptly, the Engineer or his representative shall take appropriate action as allowed under this contract and/or refer the matter to the Contractor Licensing Board for appropriate action under Section 444-17(15) Hawaii Revised Statutes regarding the Revocation, Suspension and Renewal of (Contractor) Licenses.

APPENDIX

ESTIMATE FOR CHANGE ORDER

PROJECT:_____

JOB NO._____

SUBMITTED BY:_____

Reference Bulletin No._____ P.C.D. No._____ Field Change_____

MATERIALS

Unit	Description	Unit Price	Subtotal
			$_____
			$_____
			$_____
			$_____
			$_____
			$_____
			$_____
			$_____
			$_____

TOTAL FOR MATERIALS . . . . . $_____(1)

LABOR

Classification	Hours	Hour Rate		
				$_____
*Fringe			$_____	
				$_____
Fringe			$_____	
				$_____
Fringe			$_____	
				$_____
Fringe			$_____	
				$_____
Fringe			$_____	
SUBTOTALS			$_____(2)	$_____(3)

TOTAL FOR LABOR (Wages & Fringes) (2) + (3) $_____(4)

SUBTOTAL - Materials & Labor (1) + (4) $_____(5)
O.H. & PROFIT (____%) of (5) $_____(6)
Ins. & Taxes (____%) of (3) $_____(7)
O.H. for Ins. & Taxes (6%) of (7) $_____(8)
TOTAL - MATERIALS & LABOR (5) + (6) + (7) + (8) $_____(9)

EQUIPMENT

Type or Class	Hours	Rate	
			$_____
			$_____
			$_____
			$_____
			$_____
			$_____
			$_____

TOTAL FOR EQUIPMENT . . . . . $_____(10)

TOTAL (MATERIAL, LABOR, EQUIPMENT) (9)+(10) . . . . . $_____(11)
Bond Fee 1% on (11) (If Applicable) $_____(12)
Gross Income Tax 4.16% on (11)+(12) $_____(13)
TOTAL FOR CHANGE ORDER (11)+(12)+(13) $_____

*Fringe Benefit shall be identified separately under each classification.

APPENDIX

(NAME OF CORPORATION)

I, _____, Secretary of _____ _____ Corporation, a corporation, do hereby certify that the following is a full, true and correct copy of a resolution duly adopted by the Board of Directors of said Corporation, at its meeting duly called and held at the office of the Corporation, _____, Street, _____, _____, on the day of _____ 19____, at which a quorum was present and acting throughout; and that said resolution has not been modified, amended or rescinded and continues in full force and effect:

"RESOLVED that any individual at the time holding the position of President or Vice President, be, and each of them hereby is, authorized to execute on behalf of the Corporation any bid, proposal or contract for the sale or rental of the products of the Corporation or for services to be performed by the Corporation, and to execute any bond required by any such bid, proposal or contract with the United States Government or the State of Hawaii or the City and County of Honolulu, or any County or Municipal Government of said State, or any department or subdivision of any of them."

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said _____ Corporation this _____ day of _____, 19____.

_____
Secretary

(Names and Addresses of:)
President
Vice President
Secretary

APPENDIX

CONTRACT

THIS AGREEMENT, made this _____ day of _____, 19___, by and between the State of Hawaii, by its Board of Land and Natural Resources, hereinafter called the "STATE" and _____ _____, hereinafter called the "CONTRACTOR";

WITNESSETH

That for and in consideration of the payments hereinafter mentioned, the Contractor hereby covenants and agrees with the State to furnish, deliver, construct, and pay for everything necessary for the completion of the work for, and to perform complete, all the work of:

or such part thereof as shall be required by the State, all in accordance with the Contract Specifications and Plans, Standard Specifications for Construction Work, Special Provisions for Job No. _____ and the Notice to Contractors, Information and Instructions to Bidders, Proposal, Contractor's Proposal, and any and all additions, deductions and changes thereto or therein which are hereby made a part of this Contract, all on file in the Office of the Department of Land and Natural Resources (all of which, together with this Contract and the Contractor's bonds, are herein referred to as the Contractor Documents), and further covenants and agrees to complete such work on or before _____ consecutive calendar days after receiving notice from the State to proceed, subject to such extensions as may be provided for in the Contract Documents.

For and in consideration of the covenants, undertakings, and agreements of the Contractor, and upon the full and faithful performance thereof by the Contractor, the State hereby agrees to pay to the Contractor the sum of _____ Dollars ($_____) if the number of units actually incorporated in the work proves to be as set forth in the Proposal, or if such number of units varies therefrom, the sum determined by adding the products of the number of units incorporated in the work multiplied by the respective unit prices bid therefor in the Contractor's Proposal (and, where applicable under the Specifications, multiplied by the respective adjusted unit prices). All payments under this Contract shall be made from funds appropriated by _____ _____ and any other legislative act or source from which such payments may lawfully be made. Such payments shall be made in the manner and at the time provided in the Contract Documents and shall be subject to such additions or deductions as may be in accordance with the provisions of said Contract Documents.

In addition to such payment, compensation for extra work, if any, may be allowed but shall not exceed _____ _____ Dollars ($_____) in accordance with the provisions of said Contract Documents and shall be made from funds appropriated as provided hereinabove.

This contract is subject, however, to the release of funds by the Governor.

It is covenanted and agreed by and between the Contractor and the State hereto that in the event a portion of the funds for the project is provided by the Federal Government, the sums of Federal monies which are part of the contract price and/or extras shall be paid to the Contractor only out of the aforesaid Federal funds if and when such Federal funds shall be received from the Federal Government for the purpose of such payment, and that this Contract shall not be construed to bind the State to pay said portions, at all events, out of any funds other than those which may be so received from the Federal Government.

LIQUIDATED DAMAGES per working day for failure to complete the work on time shall be the sum stated in the Proposal submitted by the Contractor.

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and these presents to be duly executed this _____ day of _____, 19____; and the Contractor has caused this Agreement to be executed and its corporate seal hereto affixed by its proper officer(s) thereunto duly authorized on the day and year first above written.

STATE OF HAWAII

By:_____
Chairperson and Member
Board of Land and Natural Resources

APPROVED AS TO FORM:

And By: _____
Member
Board of Land and Natural Resources

Deputy Attorney General

Dated:_____

_____
Contractor

By: _____
Its: _____

APPENDIX

SURETY BID BOND

Bond No. _____

KNOW ALL MEN BY THESE PRESENTS:

That we, [Full name or legal title of bidder] as Principal, hereinafter called the Principal, and [Bonding company], a corporation duly licensed for the purpose of making, guaranteeing, or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of Hawaii, as Surety, hereinafter called the Surety, are held and firmly bound unto [State/county entity], as Owner, in the penal sum of [Required amount of bid security] dollars ($_____), lawful money of the United States of America, for the payment of which sum well and truly to be made, the said Principal and the said Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS:

The Principal has submitted an offer for [Project by number and brief description].

NOW, THEREFORE:

The condition of this obligation is such that if the [State/county entity] shall reject said offer, or in the alternate, accept the offer of the Principal and the Principal shall enter into a Contract with the [State/county entity] in accordance with the terms of such offer, and give such bond or bonds as may be specified in the solicitation or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof as specified in the solicitation then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed this _____ day of _____, 19____.

_____
(Principal)

By_____
Its

_____
(Surety)

By_____
Its Attorney-in-Fact

APPENDIX

SURETY PERFORMANCE BOND

PRELIMINARY SUBJECT TO CHANGE

Bond No. _____

KNOW ALL MEN BY THESE PRESENTS:

That we, [Full name or legal title of Contractor and street address], as principal, hereinafter called Contractor, and [Bonding company], a corporation duly licensed for the purpose of making, guaranteeing, or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of Hawaii, as surety, hereinafter called the Surety, are held and firmly bound unto [State/county entity], its successors and assigns, as Obligee, hereinafter called Obligee, in the amount of [Required amount of the bond] dollars ($_____), lawful money of the United States of America, for the payment of which to the said Obligee, well and truly to be made, Contractor and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS:

The Contractor has by written agreement dated [Date of contract] entered into a contract with Obligee for [Project by number and brief description], and is hereinafter referred to as the Contract.

NOW, THEREFORE:

The condition of this obligation is such that, if Contractor shall promptly and faithfully perform said Contract then this obligation shall be null and void; otherwise it shall remain in full force and effect. The Surety hereby waives notice of any alteration or extension of time made by the Obligee and its obligation is not affected by any such alteration or extension provided the same is within the scope of the contract. Whenever Contractor shall be, and is declared by Obligee to be in default under the Contract, the Obligee having performed its obligations thereunder, the Surety may promptly remedy the default or shall promptly:

1) Complete the Contract in accordance with its terms and conditions; or

2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by the Obligee and the Surety jointly of the lowest responsive, responsible bidder, arrange for a contract between such bidder and the Obligee, and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding,

including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by Obligee to Contractor under the Contract and any amendments thereto, less the amount paid by State to Contractor. No right of action shall accrue on this bond to or for the use of any person or corporation other than the Obligee.

Signed and sealed this _____ day of _____, 19____.

PRELIMINARY
SUBJECT TO CHANGE

_____
(Principal) (SEAL)

*By_____
Its

*By_____
Its

_____
(Surety) (SEAL)

*By_____
Its Attorney-in-Fact

*ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

APPENDIX

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That [Full name or legal title of Contractor and street address], hereinafter called Obligor, is firmly bound unto the [State/county entity], its successors and assigns, hereinafter called Obligee, in the amount of [Required amount of the bond] dollars ($_____), lawful money of the United States of America, for the payment of which the Obligor does hereby bind himself/herself/itself and his/her/its heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

As security for the above obligation, Obligor attaches hereto [Legal tender; certificate of deposit; share certificate; and/or cashier's, treasurer's, teller's, official or certified check(s)] in the amount of [Required amount of bond] dollars ($_____).

WHEREAS:

The Obligor has by written agreement dated [Date of contract] entered into a contract with Obligee for [Project by number and brief description], and is hereinafter referred to as the Contract.

PRELIMINARY
SUBJECT TO CHANGE

NOW, THEREFORE:

The condition of this obligation is such that, if the Obligor shall promptly and faithfully perform said Contract then this obligation shall be null and void; otherwise it shall remain in full force and effect. The Obligor hereby waives notice of any alteration or extension of time made by the Obligee and its obligation is not affected by any such alteration or extension provided the same is within the scope of the contract. Whenever Obligor shall be, and is declared by Obligee to be in default under the Contract, the Obligee having performed its obligations thereunder:

1) The Obligor may promptly remedy the default or shall promptly complete the Contract in accordance with its terms and conditions; or

2) If the Obligor fails to promptly remedy the default or complete the contract in accordance with its terms and conditions, the Obligee shall arrange for a contract between another Contractor and the Obligee, and the Obligee will pay the cost of completing the contract, plus any administrative costs incurred by the Obligee in securing another contract or contracts, less the balance of the contract price from the security amount set forth in the first paragraph above (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph); but not exceeding

the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by Obligee to Obligor under the Contract and any amendments thereto, less the amount properly paid by Obligee to Obligor. No right of action shall accrue on this bond to or for the use of any person or corporation other than the Obligee.

Signed and sealed this _____ day of _____, 19____.

PRELIMINARY
SUBJECT TO CHANGE

_____
(Principal) (SEAL)

*By_____
Its

*By_____
Its

*ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

APPENDIX

SURETY LABOR AND MATERIAL PAYMENT BOND

Bond No._____

KNOW ALL MEN BY THESE PRESENTS:

That [Full name or legal title of Contractor and street address] as Principal, hereinafter called Contractor, and [Bonding Company], a corporation duly licensed for the purpose of making, guaranteeing, or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State, as Surety, hereinafter called Surety, are held and firmly bound unto the State as Obligee, hereinafter called Obligee, for the use and benefit of claimants as hereinbelow defined, in the amount of [Required amount of bond] dollars ($_____) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS:

The Contractor has by written agreement dated [Date of contract], entered into a contract with Obligee for [Project by number and brief description], and is hereinafter referred to as the Contract.

PRELIMINARY
SUBJECT TO CHANGE

NOW, THEREFORE:

The condition of this obligation is such that, if Contractor shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1) A claimant is defined as one having direct contract with the Contractor or with a Subcontractor for labor, material, or both , used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental of equipment directly applicable to the Contract.

2) The above-named Contractor and Surety hereby jointly and severally agree with the Obligee that every claimant as herein defined, who has not been paid in full therefor after two months from the completion and final settlement of any contract, may institute an action against the contractor and its sureties, and have their rights and claims adjudicated in the action, and judgement rendered thereon. If the full amount of the liability of the sureties on the bond is insufficient to pay the full amount of the claims, then, after paying the full amount due the Obligee, the remainder shall be distributed pro rata to the

claimants. The Obligee shall not be liable for the payment of any costs or expenses of any such suit.

3) No suit or action shall be commenced hereunder by any claimant:

a) Unless all claimants shall have given written notice to the Obligee and to the Contractor or the Surety above named, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be personally served or served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Contractor at any place the Contractor maintains as office or conducts its business.

b) After the expiration of one year after the completion and final settlement of the contract.

c) Other than in the circuit court of the circuit in which the contract was to be performed.

PRELIMINARY
SUBJECT TO CHANGE

4) The obligee named in the bond shall not be joined as a party in any such suit.

5) The amount of this bond may be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety or mechanics' liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

Signed and sealed this _____ day of _____, 19_____.

_____
(Principal) (SEAL)

*By_____
Its

*By_____
Its

_____
(Surety) (SEAL)

*By_____
Its Attorney-in-Fact

*ALL SIGNATURES MUST BE ACKNOWLEDGED BY A NOTARY PUBLIC

APPENDIX

LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS:

That [Full name or legal title of Contractor and street address] hereinafter called Obligor, is held and firmly bound unto [State/county entity] as Obligee, hereinafter call Obligee, for the use and benefit of claimants as hereinbelow defined, in the amount of [Required amount of bond] dollars ($_____) for the payment of which the Obligor does hereby bind himself/herself/itself and his/her/its heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

As security for the above obligation, Obligor attaches hereto [Legal tender; Certificate of deposit; share certificate; and/or cashier's, treasurer's, teller's, official or certified check(s)] in the amount of [Required amount of bond] dollars ($_____).

WHEREAS:

The Obligor has by written agreement dated [Date of contract], entered into a contract with Obligee for [Project by number and brief description], and is hereinafter referred to as the Contract.

PRELIMINARY
SUBJECT TO CHANGE

NOW, THEREFORE:

The condition of this obligation is such that, if Obligor shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1) A claimant is defined as one having a direct contract with the Obligor or with a Subcontractor for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental of equipment directly applicable to the Contract.

2) The above-named Obligor agrees with the Obligee that every claimant as herein defined, who has not been paid in full therefor after two months from the completion and final settlement of any contract, may institute an action against the contractor and its sureties, and have their rights and claims adjudicated in the action, and judgement rendered thereon. If the full amount of the liability of the sureties on the bond is insufficient to pay the full amount of the claims, then the remainder shall be distributed pro rata among the claimants. The Obligee shall not be liable for the payment of any costs or expenses of any such suit.

3) No suit or action shall be commenced hereunder by any claimant:

a) Unless all claimants shall have given written notice to the Obligor and the Obligee stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be personally served or served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Obligor at any place the Obligor maintains as office or conducts its business.

b) After the expiration of one year following the completion and final settlement of the contract.

c) Other than in the circuit court of the circuit in which the contract was to be performed.

4) The obligee named in the bond shall not be joined as a party in any such suit.

5) The amount of this bond may be reduced by and to the extent of any payment or payments made in good faith hereunder.

Signed and sealed this _____ day of _____, 19_____.

PRELIMINARY
SUBJECT TO CHANGE

_____
(Obligor) (SEAL)

*By_____
Its

*By_____
Its

*ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

APPENDIX

[FOR USE WITH PERFORMANCE AND PAYMENT BONDS]

CONTRACTOR ACKNOWLEDGEMENT:

STATE OF _____)
) SS.
_____COUNTY OF _____)

On this _____ day of _____, 19_____, before me appeared _____ and _____ to me personally known, who, being by me duly sworn, did say that he/she/they is/are _____ and _____ of _____ the Contractor named in the foregoing instrument, and that he/she/they is/are authorized to sign said instrument in behalf of the Contractor, and acknowledges that he/she/they executed said instrument as the free act and deed of the Contractor.

_____
Notary Public

(Notary Seal)

State of _____

My commission expires: _____

APPENDIX

[FOR USE WITH SURETY PERFORMANCE AND PAYMENT BONDS]

SURETY ACKNOWLEDGEMENT:

STATE OF _____)
) SS.
_____COUNTY OF _____)

On this _____ day of _____, 19_____, before me personally came _____ and _____ to me known, who, being by me duly sworn, did depose and say that _____ resides in _____; that _____ is the Attorney-in-Fact of _____ the corporation described in and which executed the attached instrument; that _____ knows corporate seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; and that it was so affixed by order of the Board of Directors of the said corporation; and that _____ signed _____ name thereto by like order.

_____
Notary Public

(Notary Seal)

State of _____

My commission expires: _____

APPENDIX

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

CERTIFICATION OF RECYCLED CONTENT

Solicitation No:
Title:
Issuance Date:
Operating Date:

Item No.	Product Name	Product Description	Manufacturer	Post-Consumer Recovered Material content*	Recovered Material Content*

* Post-consumer recovered material and recovered material content, as defined in §3-124-22, HAR, measured as percentage of total product weight. Attach manufacturer's specifications or certification, as required by §3-124-24(c), HAR. Recycled content measurements to be used for bid evaluation. If more space is required for product information, additional sheets may be attached.

CERTIFICATION

I declare that the above has been examined by me and to the best of my knowledge and belief is true and correct.

Company: _____
Name: _____
Address: _____
_____
Telephone No.: _____

Authorized Representative:
Name: _____
Title: _____

Signature: _____
Date: _____